IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT NAGPUR, NAGPUR.

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SECOND APPEAL NO. 178/2016

1) Union Bank of India
Through Managing Director
Union Bank Building, Vidhan Bhavan Marg
Mumbai-21.

2) Union Bank of India
Through its General Manager
Union Bank Building, Vidhan Bhavan Marg
Mumbai-21.

3) Union Bank of India
Through its General/Divisional Manager
Ramdaspeth, Nagpur.

4) Union Bank of India
Through its branch Manager
Dhantoli Branch, Nagpur. ..**APPELLANTS**

v e r s u s

Shri Shirkumar s/o Kisanlal Sahani
Aged about 45 years, occ.Business
R/o 24, Vijay Nagar, Chhawni, Nagpur. .. **RESPONDENT**

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Mr.S.D.Ingole, Advocate for the appellants
Mr.R.M.Sharma, Advocate for respondent

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CORAM: ANIL L. PANSARE, J.
DATE OF CLOSING: 21.06.2023.
DATE OF PRONOUNCEMENT: 27.06.2023.

JUDGMENT:

On 14.09.2016, the following order was passed :-

" *The trial Court dismissed the Special Civil Suit No.633 of 2000 for recovery of the amount of Rs.3,36,000/- on the ground that the amount was realized by invoking bank guarantee which had already expired on 30.06.1997. The lower Appellate Court has allowed Regular Civil Appeal No.512 of 2012 and the suit filed by the plaintiff was decreed for recovery of the amount on 03.08.2015. Hence, the original defendant - Bank is before this Court.*

The trial Court dismissed the suit after taking into consideration the communication dated 17.01.1998 said to have been executed by the plaintiff construing that it was an extension of bank guarantee. The lower appellate Court has set aside the finding of the trial Court holding that the letter was not produced along with the written statement. Undisputedly, the letter dated 17.01.1998 was marked as Exh.60. The question is whether the letter dated 17.01.1998 is proved and the bank guarantee can be said to be extended for a further period?

Admit."

2. The appellant-Bank has come up with a case that, amongst others, it had issued bank guarantees bearing No. 397/94 for Rs. 49,000/- No.400/94 for Rs.1,26,000/- and No.401/94 for Rs. 1,61,000 and that these bank guarantees were valid upto 16.12.1995. These bank guarantees were issued in favour of Maharashtra Jeevan Pradhikaran towards security for due performance of the contract awarded by the Executive Engineer, Environmental Engineering, Works Division, Bhandara to M/s S.K.Sahani, the respondent-herein.

3. It appears that there occurred a dispute between the respondent-contractor and the concerned Department that on 10th June 1998, the Department sought payment of the amount of bank guarantees and the appellant-Bank on or about 17.06.1998, effected payment of Rs.3,36,000/- to the Department.

4. The respondent, therefore, filed a suit against the bank before the trial Court and as recorded in the order dated 14.09.2016, the suit came to be dismissed. The first appellate court, however, reversed the finding of the trial court and decreed the suit. The first appellate Court has found that the case is basically based on documentary evidence. The Court relied upon the bank guarantees below Exhs.40 to 42. These bank guarantees were issued on 17.12.1994 and were valid till 16.12.1995. The appellant-Bank vide letter dated 09.12.1996 (Exh.43) extended the validity of the Bank guarantees up to 30.06.1997.

5. In the context with the above set of facts, the question, that requires answer is, whether the letter dated 17.01.1998 (Exh.60) is proved and thereby the bank guarantees can be said to be extended for a further period?

6. Having heard both the sides at length and having gone through the records, I am of the considered view that even if it is presumed that the aforesaid letter has been proved, the bank guarantees cannot be said to be extended on the basis of or only upon issuance of the said letter. Firstly, the contents of the letter nowhere suggest that the respondent had sought extension of the bank guarantees. Secondly, even if it is presumed that the respondent has sought extension of bank guarantees, that request by itself, cannot be said to be extension of the bank guarantees unless the appellant-Bank expressly extends the validity of the bank guarantees as it has done earlier vide Exh.43 *viz.*, the letter dated 09.12.1996 issued by the Manager of the Bank in favour of the Executive Engineer of the Department, stating therein that validity of the bank guarantees under question which were valid till 16.12.1995, have been extended up to 30.06.1997.

7. Mr. S.D. Ingole, learned counsel for the appellant-Bank could not point out any such letter, by which the bank guarantees have been extended beyond 30.06.1997. The learned counsel however has invited my attention to clause No. 4 of the bank guarantee (Exh.40) which reads thus:

> "*4. We, Union Bank of India, Dhantoli, Nagpur, further agree that the guarantee herein contained shall remain in full force and effect during the period that would be taken for the performance of the said agreement and that it shall continue to be enforceable till all the dues of the Government under so by virtue of the said agreement have been fully paid and its claims satisfied or discharged or till Executive Engineer, Environmental Engineering Work Division, Bhandara, certifies that the terms and conditions of the said agreement have been fully carried out by the said Contractor(s) and accordingly discharges this guarantee. Unless a demand or claim under this guarantee is made on us in writing on or before 16.12.1995, we shall be discharged from all liability under this guarantee thereafter."*

8. Accordingly, the learned counsel for the appellant-Bank contends that in terms of Clause (4) the bank guarantees would remain in full force during the period the respondent continues to perform the work under agreement. He further contends that the said clause also provides that the bank guarantees shall continue to be enforceable till all the dues of the Government under the said agreement have been fully paid.

9. The above contentions have been rightly countered by Mr. R.M. Sharma, learned counsel for the respondent. Clause (4) itself provides that unless a demand or claim under the guarantee is made to Bank in writing on or before 16.12.1995, the Bank shall be discharged from all the liability under the bank guarantees.

10. That aspect, the learned counsel for the respondent has invited my attention to clause No.8 which completely takes away the case from the hands of the appellant-Bank. Clause No.8 reads as under :

> *" 8. Notwithstanding anything contained hereinbefore, our liability under this guarantee is restricted to Rs. 49,000/- (Rupees Forty Nine thousand only) and shall remain in force up to 16.12.1995 unless a demand or claim under the guarantee is made on the bank in writing until 16.12.1995 the right to enforce the claim under the bank guarantee shall be forfeited and that the bank would relieved and discharged from all the liability under the guarantee."*

11. Thus, by the aforesaid clause, the bank guarantee would remain in force up to 16.12.1995 and if no demand or claim is made prior thereto, the bank would be relieved of and discharged from all its liabilities. It is, thus, clear that unless the validity of the guarantee is extended beyond the agreed period, which initially was up to

16.12.1995 and was extended up to 30.06.1997, the appellant-Bank on 30.06.1997, the extended period of validity of the bank guarantees, stood relieved and discharged from all its liabilities under the guarantee and that therefore the appellant-bank could not have acted upon the letter dated 10.06.1998 issued by the Department to it directly by effecting payment of Rs. 3.36,000/- after expiry of the validity period.

12. The learned first appellate Court has in detail considered the issue involved and has rightly held that the appellant-Bank has unlawfully encashed bank guarantees to the department and, therefore, the respondent is entitled for recovery of the said amount.

13. The substantial question of law is accordingly answered as follows.:-

That even if it is presumed that the letter dated 17.01.1998 (Exh.60) is proved it cannot be said that the bank guarantee has been extended.

Thus, in absence of extension of Bank guarantee, the appellant-Bank could not have paid the amount to the department. The act of the appellant-Bank is contrary to the terms of the bank guarantee and therefore, there is no substance in this Appeal. Resultantly, the Second Appeal stands dismissed. No costs.

14. At this stage, the learned counsel for the respondent submits that the appellant-Bank has deposited with the court an amount of Rs. 8,47,280/- and the respondent was permitted to withdraw 50% i.e. Rs. 4,23,640/- on furnishing undertaking. The remaining 50% is lying with the Registry of this Court. The Respondent is hereby permitted to withdraw the balance amount with interest, if any, since the appeal has been dismissed. The Registry to do the needful after receipt of necessary application from the respondent, on usual terms.

JUDGE

sahare