IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED: 25.03.2024

CORAM

THE HONOURABLE MR.JUSTICE **M.SUNDAR**
and
THE HONOURABLE MRS.JUSTICE **K.GOVINDARAJAN THILAKAVADI**

O.S.A (CAD) Nos.16 and 17 of 2024
and
C.M.P. No.3779 of 2024 in O.S.A (CAD) No.16 of 2024
and
C.M.P. No.3923 of 2024 in O.S.A (CAD) No.17 of 2024

1. The City Union Bank Ltd.,
   Represented by the Chairman and Managing Director
   Administrative Office, "Narayana"
   No.24B, Gandhi Nagar, Kumbakonam – 612 001

2. The Senior Branch Manager
   The City Union Bank Limited, T.Nagar Branch
   No.48, Mahalakshmi Street, Chennai – 600 017 ` .. Appellants in both the appeals

Vs.

1. M/s.Mahalakshmi Inn Pvt. Ltd.,
   Represented by its Director
   No.8/1, Cenotaph Road, 1st Lane
   Teynampet, Chennai – 600 018

2. M/s.Vinitha Associates Limited
   Represented by its Managing Director
   No.8/1, Cenotaph Road, 1st Lane
   Teynampet, Chennai – 600 018

3. M/s.Shoppers Spot (Chennai) Ltd.,
Represented by its Managing Director
No.112, Chamiers Road
Chennai – 600 018

4. M/s.Mahalakshmi & Sons (Partnership Firm)
Represented by its Managing Director
No.8/1, Cenotaph Road, 1st Lane
Teynampet, Chennai – 600 018 .. Respondents in both the appeals

Prayer in O.S.A (CAD) No.16 of 2024:Original Side Appeal filed under Section 13(1) of the Commercial Courts Act to set aside the order and decree dated 29.01.2024 in A.No.3497 of 2023 on the file of this Court in its Ordinary Original jurisdiction.

Prayer in O.S.A (CAD) No.17 of 2024:Original Side Appeal filed under Section 13(1) of the Commercial Courts Act to set aside the order and decree dated 29.01.2024 in A.No.6465 of 2023 in C.S (Comm.Div.) No.178 of 2023).

For Appellants : Mr.M.S.Krishnan
Senior counsel
for Ms.K.R.Ananda Gomathy

For Respondents : Mr.K.Manoj Menon
& Ms.Aruna Ganesh for Caveator/R1

M/s.Menon, Karthik, Mukundan and
Neelakantan (Law Firm) for R2 and R4

COMMON JUDGMENT

(Judgment of the Court was delivered by **M.Sundar, J.**)

This common judgment will now govern the captioned two main 'Original Side Appeals' ['OSAs' in plural and 'OSA' in singular for the sake of brevity and convenience] and captioned two 'Civil Miscellaneous Petitions' ['CMPs' in plural and 'CMP' in singular for the sake of brevity, convenience and clarity].

2. Captioned matters are in the Admission Board before this Bench and captioned OSAs are directed against a common order dated 29.01.2024 made by a Hon'ble single Judge on the Original Side of this Court in two applications namely A.No.3497 of 2023 [taken out by the plaintiff Company along with the suit] and A.No.6465 of 2023 [taken out by Defendants 1 and 2 pending suit].

3. This order has to be read in conjunction with and in continuation of earlier proceedings made in the previous listings on 27.02.2024, 14.03.2024, 19.03.2024 and 22.03.2024, which read as follows:

> **'Proceedings made on 27.02.2024**
>
> *Captioned matters are in the Admission Board i.e., Motion List today.*
>
> *2. Captioned 'Original Side Appeals' [hereinafter 'OSA' in singular and 'OSAs' in plural for the sake of ease of reference] arise out of a common order dated 29.01.2024 made by a Hon'ble single Judge of this Court in A.Nos.3497 and 6645 of 2023 in C.S.(Comm.Div.)No.178 of 2023. This '29.01.2024 common order' shall hereinafter be referred to as 'impugned*

common order' for the sake of convenience and clarity.

3. Mr.M.S.Krishnan, learned Senior counsel instructed by Ms.K.R.Ananda Gomathy, counsel on record for appellants / petitioners in captioned OSAs / CMPs and Mr.K.Manoj Menon, learned counsel representing Ms.Aruna Ganesh, counsel for caveator (R1) are before this Court.

4. The epicentre of the captioned litigation is what is described as 'negotiated one time settlement' ['OTS' for the sake of brevity] being 'OTS dated 29.12.2021' which is plaint document No.8 [hereinafter 'said OTS' for the sake of convenience and clarity].

5. 'Mahalakshmi Inn Pvt. Limited' ['MIPL' for the sake of brevity], 'Vinitha Associates Limited' ['VIAL' for the sake of brevity], 'Shoppers Spot (Chennai) Limited' ['SSCL' for the sake of brevity] and 'M/s.Mahalakshmi & Sons' ['M/s.M & S' for the sake of brevity] are three entities i.e., three companies and one firm. The three entities and this firm shall hereinafter be collectively referred to as 'borrowers' solely for the sake of convenience and ease of reference. 'City Union Bank Limited' is the lender bank and the same will be referred to as 'CUBL' for the sake of convenience and clarity.

6. Short facts are that the borrowers availed credit facilities from CUBL; that the transaction between borrowers and CUBL turned sour culminating in said OTS dated 29.12.2021; that CUBL alleging breach inter alia cancelled said OTS and approached 'Debts Recovery Tribunal, Chennai {DRT-III}' [hereinafter 'said DRT' for the sake of convenience and *clarity]*

vide O.A.No.163 of 2023 dated 03.02.2023; that pending proceedings before said DRT, MIPL resorted to 'Pre-Institution Mediation and Settlement' ['PIMS'] vide Section 12-A of 'the Commercial Courts Act, 2015 (4 of 2016)' [hereinafter 'CC Act' for the sake of convenience and clarity] which resulted in a non-starter report dated 19.01.2023 as CUBL did not respond to the mediation notice; that thereafter MIPL filed a suit (plaint dated 12.06.2023) in the Commercial Division of this Court being C.S.(Comm.Div.)No.178 of 2023; that multi-limbed prayer in the suit inter alia includes prayers to declare the alleged unilateral cancellation of said OTS by CUBL as null and void, a declaration that said OTS is binding, a mandatory injunction qua CUBL for release of documents and title deeds as regards suit property (to be noted, suit property is land and superstructure thereat at Door No.112, Plot No.144, Chamiers Road, Nandanam, Chennai-600 035, admeasuring an extent of 2 grounds and 1920 sq.ft thereabouts), a further prayer claiming One Crore and One Lakh i.e., Rs.1.01 Crores against CUBL towards damages for alleged breach, falsification and inflation of charge qua security assets including suit property besides the usual residuary prayer and prayer for costs; that pending suit, two applications in A.Nos.3497 of 2023 and 6465 of 2023 were taken out by MIPL and CUBL respectively; that Hon'ble single Judge took up both the applications together; that A.No.3497 of 2023 filed by MIPL was with a prayer to direct CUBL to release title documents of suit property and discharge suit property from encumbrance by executing and registering a proper deed of *discharge of mortgage; that A.No.6465 of 2023 taken out by CUBL was with a prayer to strike off prayer limbs 1 to 3 from the plaint saying the same is barred vide Section 11 of CC Act; that as already alluded to supra, Hon'ble single Judge took up both applications together and passed impugned common order which has been assailed by CUBL in the captioned OSAs; that Hon'ble single Judge made an order inter alia saying that on MIPL furnishing fixed deposits in a sum of Rs.95,00,000/- in favour of Registrar General, Madras High Court to the credit of suit {C.S.(Comm.Div.)No.178 of 2023}, CUBL should discharge the mortgage qua suit property and as regards A.No.6465 of 2023 taken out by CUBL with prayers to strike off prayer limbs 1 to 3 in the plaint was dismissed.*

7. From the preliminary submissions, the following undisputed points which are of relevance emerged:

> *(a) MIPL has deposited Rs.95 Lakhs in accordance with impugned common order on 02.02.2024;*
>
> *(b) CUBL which is D1 and D2 (to be noted, CUBL and Senior Branch Manager have been arrayed as D1 and D2) has filed written statement vide D.No.36634 of 2023, the same is lying under objections;*
>
> *(c) As regards VIAL, SSCL and M/s.M & S which have been arrayed as D3 to D5 in the suit shall not be filing written statement. This submission made at the bar by Mr.K.Manoj Menon, counsel on record for D3 to D5 before Hon'ble single Judge is recorded.*

8. It is deemed appropriate to record that Hon'ble single Judge vide impugned common order has drawn heavily *from principles of **VCK Shares** case **[Bank of Rajasthan Vs. VCK Shares & Stock Broking Services Limited]** and Hon'ble single Judge has referred to Manu citation being MANU/SC/1477/2022. This **VCK Shares** case which is in answer to reference by a three member Bench of Hon'ble Supreme Court has since been reported in **(2023) 1 SCC 1 : 2022 SCC OnLine SC 1557**.*

9. After some submissions, on instructions from counsel on record for CUBL, learned Senior counsel suggested that the matter may be rescheduled.

10. A thumbnail sketch of facts and the trajectory the matter has taken thus far have been captured for ease of reference in the ensuing listings.

11. Captioned two OSAs are now tagged together with the consent of both sides. Tagged OSAs and CMPs thereat will now stand rescheduled after a fortnight.

12. List in the Admission Board i.e., Motion List under the cause list caption 'ADJOURNED ADMISSION' on 14.03.2024.'

'Proceedings made on 14.03.2024

Read this in conjunction with and in continuation of earlier proceedings made in the previous listing on 27.02.2024 which reads as follows:

'O.S.A.(CAD) Nos.16 and 17 of 2024
and
C.M.P.Nos.3779 & 3923 of 2024
in
O.S.A.(CAD) Nos.16 and 17 of 2024

M.SUNDAR, J.,

and

K.GOVINDARAJAN THILAKAVADI, J.,

[Order of the Court was made by M.SUNDAR, J.,]

Captioned matters are in the Admission Board i.e., Motion List today.

2. Captioned 'Original Side Appeals' [hereinafter 'OSA' in singular and 'OSAs' in plural for the sake of ease of reference] arise out of a common order dated 29.01.2024 made by a Hon'ble single Judge of this Court in A.Nos.3497 and 6645 of 2023 in C.S.(Comm.Div.)No.178 of 2023. This '29.01.2024 common order' shall hereinafter be referred to as 'impugned common order' for the sake of convenience and clarity.

3. Mr.M.S.Krishnan, learned Senior counsel instructed by Ms.K.R.Ananda Gomathy, counsel on record for appellants / petitioners in captioned OSAs / CMPs and Mr.K.Manoj Menon, learned counsel representing Ms.Aruna Ganesh, counsel for caveator (R1) are before this Court.

4. The epicentre of the captioned litigation is what is described as 'negotiated one time settlement' ['OTS' for the sake of brevity] being 'OTS dated 29.12.2021' which is plaint document No.8 [hereinafter 'said OTS' for the sake of convenience and clarity].

5. 'Mahalakshmi Inn Pvt. Limited' ['MIPL' for the sake of brevity], 'Vinitha Associates Limited' ['VIAL' for the sake of brevity], 'Shoppers Spot (Chennai) Limited' ['SSCL' for the sake of brevity] and 'M/s.Mahalakshmi & Sons' ['M/s.M & S' for the sake of brevity] are three entities i.e., three companies and one firm. The three entities and this firm shall hereinafter be collectively referred to as 'borrowers' solely for the sake of convenience and ease of reference. 'City Union Bank Limited' is the lender bank and the same will be referred to as 'CUBL' for the sake of convenience and clarity.

6. Short facts are that the borrowers availed credit facilities from CUBL; that the transaction between borrowers and CUBL turned sour culminating in said OTS dated 29.12.2021; that CUBL alleging breach inter alia cancelled said OTS and approached 'Debts Recovery Tribunal, Chennai {DRT-III}' [hereinafter 'said DRT' for the sake of convenience and clarity] vide O.A.No.163 of 2023 dated 03.02.2023; that pending proceedings before said DRT, MIPL resorted to 'Pre-Institution Mediation and Settlement' ['PIMS'] vide Section 12-A of 'the Commercial

Courts Act, 2015 (4 of 2016)' [hereinafter 'CC Act' for the sake of convenience and clarity] which resulted in a non-starter report dated 19.01.2023 as CUBL did not respond to the mediation notice; that thereafter MIPL filed a suit (plaint dated 12.06.2023) in the Commercial Division of this Court being C.S.(Comm.Div.)No.178 of 2023; that multi-limbed prayer in the suit inter alia includes prayers to declare the alleged unilateral cancellation of said OTS by CUBL as null and void, a declaration that said OTS is binding, a mandatory injunction qua CUBL for release of documents and title deeds as regards suit property (to be noted, suit property is land and superstructure thereat at Door No.112, Plot No.144, Chamiers Road, Nandanam, Chennai-600 035, admeasuring an extent of 2 grounds and 1920 sq.ft thereabouts), a further prayer claiming One Crore and One Lakh i.e., Rs.1.01 Crores against CUBL towards damages for alleged breach, falsification and inflation of charge qua security assets including suit property besides the usual residuary prayer and prayer for costs; that pending suit, two applications in A.Nos.3497 of 2023 and 6465 of 2023 were taken out by MIPL and CUBL respectively; that Hon'ble single Judge took up both the applications together; that A.No.3497 of 2023 filed by MIPL was with a prayer to direct CUBL to release title documents of suit property and discharge suit property from encumbrance by executing and registering a proper deed of discharge of mortgage; that A.No.6465 of 2023 taken out by CUBL was with a prayer to strike off prayer limbs 1 to 3 from the plaint saying the same is barred vide Section 11 of CC Act; that as already alluded to supra, Hon'ble single Judge took up both applications together and passed impugned common order which has been assailed by CUBL in the captioned OSAs; that Hon'ble single Judge made an order inter alia saying that on MIPL furnishing fixed deposits in a sum of Rs.95,00,000/- in favour of Registrar General, Madras High Court to the credit of suit {C.S.(Comm.Div.)No.178 of 2023}, CUBL should discharge the mortgage qua suit property and as regards A.No.6465 of 2023 taken out by CUBL with prayers to strike off prayer limbs 1 to 3 in the plaint was dismissed.

7. From the preliminary submissions, the following undisputed points which are of relevance emerged:

(a) MIPL has deposited Rs.95 Lakhs in accordance with impugned common order on 02.02.2024;

(b) CUBL which is D1 and D2 (to be noted,

CUBL and Senior Branch Manager have been arrayed as D1 and D2) has filed written statement vide D.No.36634 of 2023, the same is lying under objections;

(c) As regards VIAL, SSCL and M/s.M & S which have been arrayed as D3 to D5 in the suit shall not be filing written statement. This submission made at the bar by Mr.K.Manoj Menon, counsel on record for D3 to D5 before Hon'ble single Judge is recorded.

*8. It is deemed appropriate to record that Hon'ble single Judge vide impugned common order has drawn heavily from principles of **VCK Shares** case **[Bank of Rajasthan Vs. VCK Shares & Stock Broking Services Limited]** and Hon'ble single Judge has referred to Manu citation being MANU/SC/1477/2022. This **VCK Shares** case which is in answer to reference by a three member Bench of Hon'ble Supreme Court has since been reported in **(2023) 1 SCC 1 : 2022 SCC OnLine SC 1557**.*

9. After some submissions, on instructions from counsel on record for CUBL, learned Senior counsel suggested that the matter may be rescheduled.

10. A thumbnail sketch of facts and the trajectory the matter has taken thus far have been captured for ease of reference in the ensuing listings.

11. Captioned two OSAs are now tagged together with the consent of both sides. Tagged OSAs and CMPs thereat will now stand rescheduled after a fortnight.

12. List in the Admission Board i.e., Motion List under the cause list caption 'ADJOURNED ADMISSION' on 14.03.2024.'

2. Today, Mr.M.S.Krishnan, learned Senior counsel, instructed by Ms.K.R.Ananda Gomathy, counsel on record for appellants / petitioners in the captioned OSAs and CMPs and Mr.K.Manoj Menon, learned counsel representing Ms.Aruna Ganesh, counsel for caveator (R1) are before this Court.

3. Aforementioned counsel submit that all facts, dates and other details have been correctly captured in our aforementioned earlier proceedings dated 27.02.2024.

4. Be that as it may, we find that in our aforementioned earlier proceedings dated 27.02.2024, three minor typographical *errors have crept in. The three minor typographical errors and the corrections now carried out are as follows:*

> *(i) In Page No.4, in paragraph No.6, 5th line from bottom 'same is barred' should read as 'same are barred';*
>
> *(ii) In Page No.5, in paragraph No.7, 'points which are of relevance' should read as 'points of relevance';*
>
> *(iii) In page No.5, in sub-paragraph (c) of paragraph No.7, 'in the suit shall' should read as 'in the suit, they shall'.*

5. Aforementioned three typographical errors are corrected and it will now to be read as per this order and therefore, this order will serve as Corrigendum / Errata and both learned counsel agreed for this.

*6. As regards paragraph No.8, **VCK Shares** principle being principle laid down by Hon'ble Supreme Court in **Bank of Rajasthan Vs. VCK Shares & Stock Broking Services Limited** reported in **2022 SCC OnLine SC 1557**, we find that the questions as to (a) whether the borrower is entitled to file a civil suit against a Bank and (b) whether such a suit, if filed, would be hit by Sections 18 and 31 of Recovery of Debts and Bankruptcy Act, 1993 [hereinafter 'RDB Act' for the sake of convenience and clarity] were considered and the reference questions were answered as set out in **VCK Shares** case law.*

7. Today, Mr.M.S.Krishnan, learned Senior counsel very fairly submitted that though the strike off prayer is with regard to two limbs of the plaint prayer, he would now restrict it to only one limb and that would be limb (c) which reads as follows:

> *'(c) to issue an order of Mandatory Injunction directing defendants 1 and 2 to release the*

documents of title relating to suit schedule property and to discharge the said property from encumbrance by executing and registering a proper deed of discharge of mortgage before the concerned office of the Sub Registrar.'

8. On the request for a short accommodation on behalf of the appellant, we list this matter in the Admission Board i.e., Motion List under the same cause list caption i.e., 'ADJOURNED ADMISSION' on Tuesday.

List on 19.03.2024. '

'Proceedings made on 19.03.2024

Mr.M.S.Krishnan, learned senior counsel instructed by Ms.K.R.Ananda Gomathy, learned counsel on record for appellants and Mr.K.Manoj Menon, learned counsel representing Ms.Aruna Ganesh, learned counsel on record for first respondent and M/s.Menon, Karthik, Mukundan and Neelakantan (Law Firm) for respondents 2 to 4 are before us.

2. Owing to the grouping matters STAs batch on Board today, captioned OSAs are re-notified. Though this Court is inclined to take up the matter tomorrow and/or day-after-tomorrow and Mr.K.Manoj Menon is agreeable, Mr.M.S.Krishnan, learned senior counsel requests for an accommodation as regards tomorrow/day after tomorrow. Therefore, this matter will now appear in the list on Friday i.e., on 22.03.2024.

'Proceedings made on 22.03.2024

Matter mentioned at half past ten.

2. Mr.R.K.S.M.Aditya Chokkanadha Naicker, learned counsel representing Ms.K.R.Ananda Gomathy, learned counsel on record for appellants requested for a short accommodation citing difficulty for Senior Advocate Mr.M.S.Krishnan, who is leading Ms.K.R.Ananda Gomathy.

3. Mr.K.Manoj Menon, learned counsel representing Ms.Aruna Ganesh, counsel on record for R1 and M/s.Menon, Karthik, Mukundan and Neelakantan (Law Firm) on behalf of R2 to R4, who are on caveator are before this Court.

4. Learned counsel for caveator submitted that the first respondent is facing difficulty as there is a charge exceeding Rs.5 Crores which is preventing R1 from opening the account in any Bank other than the one in which the first respondent is currently holding account.

5 In the light of the narrative thus far, making it clear that the next listing shall be peremptory, list the captioned matter in the Admission Board i.e., Motion List on Monday.

6. List on 25.03.2024.'

3. The aforementioned proceedings made in the earlier listings shall now be read as an integral part and parcel of this order.

4. The aforementioned proceedings capture factual matrix in a nutshell i.e., short facts that are imperative for appreciating this common

order and therefore, we are not setting out the same again. Likewise, the aforementioned proceedings capture the bone of contention as well as the trajectory the matter has taken in the Admission Board before us and therefore, we are also not setting out the same again. Suffice to say that short forms, abbreviations and short references used in the earlier proceedings will continue to be used in the instant common judgment also for the sake of convenience and clarity.

5. Before proceeding further, we deem it appropriate to set out that one of the captioned OSAs i.e., O.S.A (CAD) No.17 of 2024 and CMP thereat being C.M.P.No.3923 of 2024 are being given a closure as not maintainable. The reason is, Mr.M.S.Krishnan, learned Senior counsel appearing on behalf of / leading Ms.K.R.Ananda Gomathy, learned counsel for CUBL adverting to Full Bench judgment of this Court in ***Suraj Lal Vs. Pradeep Stainless India Pvt. Ltd., and Others*** being order dated 02.03.2023 made in O.S.A.Nos.26 to 29 of 2020 submitted that A.No.6465 of 2023 taken out by defendants 1 and 2, which has been dismissed by Hon'ble Single Judge [against which O.S.A (CAD) No.17 of 2024 has been preferred] does not fall under any of the 23 sub-clauses (a) to (w) of Rule 1 of Order XLIII of 'the Code of Civil Procedure, 1908' ['CPC' for the sake of brevity]. Learned Senior

Advocate very fairly submitted that therefore, O.S.A (CAD) No.17 of 2024 is not maintainable in the light of ***Suraj Lal*** principle read in juxta position with Section 13 of CC Act.

6. The aforementioned scenario leaves this Court with O.S.A (CAD) No.16 of 2024 and CMP thereat being C.M.P.No.3779 of 2024.

7. O.S.A (CAD) No.16 of 2024 is directed against an order made in A.No.3497 of 2023, which, as already alluded to supra, has been filed by the plaintiff along with the plaint. The prayer in A.No.3497 of 2023 is a direction to Respondents 1 and 2 thereat i.e., CUBL which is on appeal before us to release the documents pertaining to suit schedule property and discharge the suit schedule property from encumbrance by executing and registering a proper deed of discharge of mortgage before the concerned Sub-registrar office pending disposal of the suit. To be noted, the suit property has already been described in the previous proceedings, which has been extracted and reproduced supra.

8. In and by the impugned order, Hon'ble single Judge has passed an order wherein and whereby there is a direction to CUBL to discharge the mortgage relating to the suit property by executing and registering a proper deed of discharge of mortgage and a further direction to release the document of title pertaining to the suit property subject to the condition that the plaintiff should furnish a Fixed Deposit for a sum of Rs.95 lakhs favouring Registrar General of this Court to the credit of the suit in C.S.(Comm.Div.)No.178 of 2023 within a time frame of one

week as set out therein and Hon'ble single Judge has also made it clear vide the impugned order that such Fixed Deposit together with accrued interest shall be renewed periodically till the final disposal of the suit and if the Fixed Deposit is not renewed periodically, CUBL is entitled to encash the Fixed Deposit with accrued interest and appropriate the proceeds towards its dues.

9. There is no disputation or contestation before this Court that plaintiff has deposited this Rs.95 lakhs on 02.02.2024 well within one week time frame and that this sum of Rs.95 lakhs is now lying in an interest bearing fixed deposit to the credit of the suit i.e., C.S.(Comm.Div.) No.178 of 2023. Therefore, as regards the impugned order of the Hon'ble single Judge, the plaintiff has performed its part of the directive and the ball is in the CUBL's Court which is on appeal before this Bench.

10. After hearing learned Senior counsel for counsel on record for CUBL, this Court deems it appropriate to hear the counsel for caveator [to be noted, the plaintiff which is R1 in the captioned appeal is on caveat and on notice regarding admission]. In other words, after hearing the learned Senior counsel, notice regarding admission was issued, first respondent/caveator counsel accepted the same, learned

counsel for Respondents 2 to 4 is also represented by the same counsel and with the consent of both sides, main OSA itself along with CMP thereat was taken up albeit at the notice regarding admission stage and the same is being disposed of.

11. After extensive hearing, this Court has come to the considered conclusion that the impugned order of the Hon'ble single Judge does not deserve to be interfered with but there are some further developments, the same are set out in the form of directives infra, which will also form part of dispositive reasoning qua this conclusion.

12. The reasons for the conclusion we have arrived at are set out infra by way an adumbration. To be noted, this adumbration will consists of the point that arose for consideration, discussion on the point and rival contention, our dispositive reasoning and the conclusion. The adumbration is as follows:

a) At the outset, the question of maintainability of O.SA (CAD) No.16 of 2024 arose. Learned Senior counsel contended that OSA is maintainable as the interim order made by Hon'ble single Judge in A.No.3497 of 2023 will snugly fit into clause (r) of Rule 1 of Order XLIII, which reads as follows:

*'1.**Appeals from orders**.- An appeal shall lie from the following orders under the provisions of Section 104, namely.-*

* * * * * * * *

(r) an order under rule 1, rule 2 [rule 2-A], rule 4 or rule 10 of Order XXXIX.'

Learned Senior counsel adverting to Judge's summons in A.No.3497 of 2023 in C.S.(Comm.Div.) No.178 of 2023 submitted that plaintiff which is the applicant has camouflaged the application by saying the same is under Section 151 of the 'Code of Civil Procedure, 1908' ['CPC' for the sake of brevity] wherein in effect it is a prayer for mandatory injunction under Order XXXIX Rule 1 Clause (a), which reads as follows:

'1. Cases in which temporary injunction may be granted

(a) ......

(b) ......

(c) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors.'

In response to this argument, learned counsel for caveator submitted that this is not a case where the suit property is in danger of being wasted, damaged or alienated and therefore, the prayer of the plaintiff would not fit into Order XLI Rule 1 and this is the reason why the plaintiff resorted to Section 151 CPC. To be noted, Judge's summons mentions Order XIV Rule 8 of Original Side Rules but that hardly matters as Order XIV Rule 8 pertains matters qua Judge's summons as opposed to Master's summons i.e., those of the applications which have to be heard by Hon'ble Judge and not learned Master (to be noted, an adumbration of the applications to be heard by learned Master have been made under Rule 10 of Order XIV of Original Side Rules). Therefore, the simple question before this Court is whether the prayer would fit into Clause (r) of Rule 1 of Order XLIII which talks about Order XXXIX Rule 1. We find that Order XXXIX Rule 1, besides suit property being in danger of being wasted, damaged or alienated, also talks about 'wrongful sale in execution of a decree'. In the case on hand, the apprehension of the plaintiff is that the Bank which has resorted to DRT proceedings under the 'Recovery of Debts Due to Banks and Financial Institutions Act, 1993 (51 of 1993)' [hereinafter 'RDB Act' for the sake of brevity and convenience] vide O.A.No.163 of 2023 on the file of DRT-III, Chennai may resort to selling away the suit property vide orders made in summary proceedings before the DRT. Therefore, we are of the view that while there are several hues and shades of prayer under Order XXXIX Rule 1A, the case on hand comes close to getting encapsulated in wrongful sale in execution of a decree. We are conscious that there is no decree and it is only one of the hues and shades of Order XXXIX Rule 1 of CPC. We are also conscious that clause (r) of Rule 1 of Order XLIII while talking about Rule 1 does not talk about Rule 1A of Order XXXIX of CPC. Therefore, considering the peculiar facts and circumstances of the case on hand, we negative the objections to maintainability of the captioned OSA and we proceed to hear the same on merits.

b) It was submitted that the impugned order tantamounts to granting the entire relief in the plaint. A bare reading of the plaint prayer brings to light that this submission cannot but fail as the plaint prayer consists 5 of limbs and the same reads as follows:

'The plaintiff therefore prays for a Judgment and Decree:-

a) to declare that the unilateral cancellation of the Negotiated Settlement dated 29.12.2021 by Defendants 1 and 2 is illegal, void ab initio and non-est.

b) to declare that the Negotiated Settlement dated 29.12.2021 is valid and binding on Defendants 1 and 2.

c) to issue an order of Mandatory Injunction directing Defendants 1 and 2 to release the documents of Title relating to Suit Schedule Property and to discharge the said property from encumbrance by executing and registering a proper Deed of Discharge of Mortgage before the concerned Office of the Sub Registrar.

d) to direct Defendants 1 and 2 to pay to the Plaintiff a sum of Rs.1,01,00,000/-(Rupees One crore and one lakh only) with interest thereon @ 18% per annum from the date of the suit till realization as damages/compensation for the loss suffered, opportunity lost and agony underwent by the plaintiff on account of the deliberate breach of contract and falsification and inflation of charge due on the secured asset being the Suit Schedule property.

d) To grant such other relief as this Honourable

Court may seem fit.

e) to direct the contesting Defendants 1 and 2 to pay to the Plaintiff the cost of the suit. '

A careful perusal of the plaint prayer will make it clear that there is a claim for Rs.1.01 crores towards damages by the plaintiff, towards alleged loss of opportunity, breach of OTS etc., and therefore, it cannot be gainsaid that the impugned order tantamounts to granting the relief in the entire suit. In any event, the relief touches upon Clause (c) supra and going by Clause (c), the prayer of the plaintiff is for unconditional discharge and this is predicated on the submission that OTS is binding and unilateral cancellation of OTS by the Bank is illegal and that payments as per OTS have been made, whereas learned single Judge has directed release and raising of the charge only on condition that Rs.95 lakhs is deposited to the credit of the suit and the same has been done on 02.02.2022 as already alluded to supra. This is another reason as to why this cannot be gainsaid that interim order tantamounts to granting the entire relief in the suit. To put it differently, the question as to whether unilateral cancellation of OTS by CUBL is illegal, whether the OTS is binding on the CUBL, whether the plaintiff is entitled to raising of the charge based on the transaction thus far without payment of any further money and as to whether the plaintiff is entitled to Rs.1.01 crores or any other sum towards damages are all questions which constitute the *lis* in the suit and therefore, the suit clearly has to be decided based on deposition, documentary evidence i.e., trial including Clause (c) of the prayer in the plaint and this means that the argument that the interim order tantamounts to granting the entire relief in the suit has to inevitably fail. This argument is not sustained.

c) The next point that was canvassed turns on ***VCK*** principle i.e., the principle laid down by Hon'ble Supreme Court in answering a reference in ***Bank of Rajasthan Vs. VCK Shares & Stock Broking Services Limited*** reported in ***(2023) 1 SCC 1.*** Learned Senior counsel submitted that Section 18 of RDB Act is an impediment and learned Senior counsel also submitted that there is substantial overlap as between the prayer before

DRT and in the suit. As regards Section 18 of RDB Act, a careful perusal of ***VCK*** principle as reported in SCC will make it clear that Hon'ble Supreme *inter alia* has considered Sections 17, 18, 19, 31 and has thereafter come to the conclusion that jurisdiction of civil Court to try a suit filed by the borrower against a Bank or Financial Institution is not ousted by virtue of the scheme of RDB Act in relation to proceedings for recovery of debt by a Bank or financial institution.

Before we proceed further we respectfully remind ourselves of the declaration of law as regards precedents made by Hon'ble Supreme Court i.e., by a Constitution Bench of Hon'ble Supreme Court in ***Padma Sundara Rao*** case law i.e., ***Padma Sundara Rao Vs. State of Tamil Nadu*** case reported in ***(2002) 3 SCC 533: 2002 SCC OnLine SC 334,*** relevant paragraph is paragraph 9 and the same reads as follows:

> ***'9.****Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the*

decision on which reliance is placed. There is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case, said Lord Morris in Herrington v. British Railways Board [(1972) 2 WLR 537 : 1972 AC 877 (HL) [Sub nom British Railways Board v. Herrington, (1972) 1 All ER 749 (HL)]] . Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases.'

In the spirit of ***Padma Sundara Rao,*** we deem it appropriate to set out the factual matrix of ***VCK*** principle in a nutshell. In ***VCK*** case law, the bank sanctioned a term loan of Rs.1.50 Crores, to secure this loan, the guarantors including the respondent thereat had furnished immovable properties as securities, as there was failure to make payment, bank filed a Original Application in DRT under RDB Act, the borrower after entering appearance in DRT, filed a civil suit in Calcutta High Court on 06.03.1998 *inter alia* praying for a decree qua pledged shares, recovery of sale proceeds and enquiry into losses suffered by the respondent along with a decree for payment of money after the same and there was a crucial development pending suit and that is, the Bank sold the pledged shares to a software company, a declaration that the sale was void and for a return of pledged share was also sought. The reference in ***VCK*** case law became necessary owing to two conflicting views taken by two different Benches of Hon'ble Supreme Court, one in ***Abhijit Tea Company*** case [***United Bank of India, Calcutta vs. Abhijit Tea Co. Pvt.Ltd. and ors***] reported in ***(2000) 7 SCC 357*** and ***ABS Marine products*** case [***Indian Bank Vs. ABS Marine Products Pvt. Ltd.,***] reported in ***(2006) 5 SCC 72***. While in ***Abhijit Tea Company*** case, a two Judge Bench of the Hon'ble Supreme Court took the view that the legislative scheme of RDB is such that jurisdiction conferred on RDB to try counter claims and set offs under Section 19 would take within its sweep such suits, in ***ABS Marine***, another Hon'ble Bench of co-equal strength, took the view that civil Courts are not barred as regards suits filed by the borrower against a

Bank for any relief. Therefore, it is in the light of conflict between ***Abhijit Tea Company*** and ***ABS Marine*** that a reference was made and a three Judges Hon'ble Bench of the Supreme Court speaking through Hon'ble Mr.Justice **Sanjay Kishan Kaul**, as his lordship then was, addressed itself to three questions and answered the same vide paragraph 56, which reads as follows:

'56. In view of the discussion aforesaid, the questions framed above are to be answered as under:

(c) Is the jurisdiction of a Civil Court to try a suit filed by a borrower against a Bank or Financial Institution ousted by virtue of the scheme of the RDB Act in relation tothe proceedings for recovery of debt by a Bank or Financial Institution?

The aforesaid question ought to be answered first and is answered in the negative.

(a) Whether an independent suit filed by a borrower against a Bank or Financial Institution, which has applied for recovery of its loan against the plaintiff under the RDB Act, is liable to be transferred and tried along with the application under the RDB Act by the DRT?

In the absence of any such power existing in the Civil Court, an independent suit filed by the borrower against the bank or *financial institution cannot be transferred to be tried along with application under the RDB Act, as it is a matter of option of the defendant in the claim under the RDB Act. However, the proceedings under the RDB Act will not be impeded in any manner by filing of a separate suit before the Civil Court.*

(b) If the answer is in the affirmative, can such transfer be ordered by a court only with the consent of the plaintiff?

Since there is no such power with the Civil Court, there is no question of transfer of the suit whether by consent or otherwise.'

This Court having extracted and reproduced paragraph 56 of ***VCK*** principle deems it appropriate to set out paragraph 53 also, which reads as follows:

> *53. We certainly would not like that the process envisaged under the RDB Act be impeded in any manner by filing of a separate suit if a defendant chooses to do so. A claim petition before the DRThas to proceed in a particular manner and would so proceed. There can be no question those proceedings by way of a civil proceeding instituted by a defendant before the Civil Court. The suit would take its own course while a petition before the DRT would take its own course. We appreciate that*

this may be in the nature of parallel proceedings but then it is the defendant's own option. We see no problem with the same as long as the objective of having expeditious disposal of the claim before the DRT under the RDB Act is not impeded by filing a civil suit. Thus, it is not open to a defendant, who may have taken recourse to the Civil Court, to seek a stay on the decision of the DRT awaiting the verdict of his suit before the Civil Court as it is a matter of his choice.'

A careful perusal of this paragraph 53 makes it clear that ***VCK*** principle is to the effect that parallel proceedings can go on and the summary proceedings before DRT as well as the regular trial in the suit which is exercise of civil rights under Section 9 of CPC vide an elaborate trial would take their respective trajectories as per the procedure. The caveat is that a person should not take recourse to civil Court to seek a stay of the decision of the DRT awaiting verdict before a civil Court. As paragraph 53 articulates this proposition, without dilating further we only apply the same to the case on hand i.e., to the factual matrix scenario in the instant case. Going by the factual matrix scenario, the claim of CUBL before DRT is a little over

Rs.90.43 lakhs [Rs.90, 43,70.59 to be precise] and the prayer *inter-alia* is for a recovery of certificate for this sum together with interest / sale of suit property. On a demurrer, hypothetically speaking even if this prayer is allowed, Rs.95 lakhs is lying to the credit of the suit and therefore CUBL to say the least is sitting pretty. In this view of the matter also, on equity too, we find no ground to interfere with the order of the Hon'ble single Judge. We are of the considered view that Hon'ble single Judge has rightly applied ***VCK*** principle laid down by Hon'ble Supreme Court.

d) Though the factual matrix has been captured in the earlier proceedings, it is necessary to dilate a little more to examine the other points which were brought up before this Bench. It will suffice to start from extension of equitable mortgage vide a registered document on 22.02.2021. Further factual matrix is that this equitable mortgage extension (registered document) made on 22.02.2021 was followed by a demand notice dated 27.10.2021; that vide this 27.10.2021 notice, the Bank had classified the accounts of SSCL and MIPL firms as NPA (Non-performing Asset); that this was followed by a reply from MIPL and VIAL; that thereafter, an offer to pay 20 Crores was made, it was accepted by CUBL and the same culminated in a OTS dated 29.12.2021; that vide this OTS, a sum of Rs.25 lakhs had to be paid by 31.12.2021, this was paid; that thereafter, a sum of 4.75 crores had to be paid on or before 25.01.2022; that there is no disputation that this sum was also paid well in advance i.e., on 07.01.2022; that it was agreed that on payment of this Rs.4.7 crores, the property of SSCL at Vadapattinam Village had to be released; that this was released after exchange of correspondence on 20.01.2024 (we leave at that as there may be some issues for trial before the single Judge on this aspect); that Rs.15 Crores in all towards SSCL and VIAL was paid; that on payment of this Rs.15 Crores, the property of SSCL Mambakkam had to be released and the same has been done is the submission; that this Rs.15 Crores which ought to have been paid on or before 31.03.2022 was actually not paid within that period and that has caused a default is CUBL counsel's say; that this Rs.15 Crores ought to have been paid on or before 31.03.2022 and was not actually paid within that period; that this has caused default is CUBL's say whereas learned counsel for caveator submits that monies were paid between 29.12.2021 and 31.03.2022 {that this is a matter of contestation / disputation in the suit and therefore, we express no opinion on the same and we leave it open for the Hon'ble single Judge to decide the matter based on deposition and documentary evidence i.e., by Hon'ble single Judge presiding over Commercial Division of this Court where aforementioned C.S.(Comm.Div.)No.178 of 2023 is now pending;

e) This Court having set out the further necessary factual matrix, now proceeds to deal with the case laws that were placed before this Court regarding mandatory injunction. Though multiple case laws were placed before this Court, learned Senior counsel in his usual fairness submitted that it will suffice if ***K.P.M.Aboobucker*** case [***K.P.M.Aboobucker Vs.K.Kunhamoo and Ors (decided on 20.12.1957) reported in AIR 1958 Mad 287***], ***Dorab Cawasji Warden*** case [***Dorab Cawasji Warden Vs. Coomi Sorab Warden and Others*** reported in ***AIR 1990 SC 867***], ***Metro Mines*** case [***Metro Mines and Ors. Vs. Bonus Watch Co. Pvt. Ltd., and Ors.*** reported in ***AIR 2005 SC 1444***] and ***Kishore Kumar Khaitan*** case [K***ishore Kumar Khaitan and Ors. Vs. Praveen Kumar Singh*** reported in ***AIR 2006 SC 1474***] are considered. In other words, these four case laws were pressed into service for the proposition that in mandatory injunction reliefs, Court should not grant an order which will alter the balance of convenience and will create a new state qua existing position. We again remind ourselves of ***Padma Sundara Rao*** principle and paragraph 9 thereat. Before we discuss this case law, as regards ***Aboobucker*** case law, relevant paragraph is paragraph 16 but the facts were not highlighted in the hearing. We respectfully read through ***Aboobucker*** case law and we find that facts in ***Aboobucker*** are that it pertains to a partition suit, it dealt with passing of an order of mandatory injunction in a partition suit, it is in this context that in paragraph 16 thereat, Hon'ble Supreme Court held that there will be no justification for grant of an interim relief which will just lapse on the termination of the suit but will leave the parties in the same position in which they were before the institution of the suit in the course of which interim relief was sought for and obtained. Therefore, ***Aboobucker*** case law does not come to the aid of CUBL in the case on hand.

This takes us to ***Dorab Cawasji Warden*** case and the relevant paragraph therein is, paragraph 15. In ***Dorab Cawasji Warden***'s case again the facts were not articulated in the hearing but in the light of ***Padma Sundara Rao*** principle, we carefully looked at the facts and that shows that one Sohrab died intestate in October of 1976 leaving behind his wife and two minor sons besides two other respondents in appeal and some of the respondents sold their undivided share in the suit property and thereafter, a suit was filed qua parting with possession and third party rights. This again is completely different on facts and therefore, does not come to the aid of CUBL. In ***Dorab Cawasji Warden*** case, the relevant paragraph is paragraph 15 and it was in the aforesaid factual setting that Hon'ble Supreme Court held that the Court should consider as to whether the balance of convenience lies and whether it is desirable that the *status quo* should be maintained and went on to hold that mandatory injunction is granted only to restore *status quo* and not granted to establish a new state of things different from the state which existed on the date when the suit was instituted. In any event, in the case on hand, no new state is created as CUBL is adequately secured. Rs.95 lakhs is lying to the credit of the suit, it is in a interest bearing account, if it is not renewed, CUBL will be entitled to take the money and in any event, as already alluded to supra, even if the claim in DRT under RDB is allowed, it will only be a little over Rs.90.43 lakhs and therefore, CUBL is more than adequately secured and no new state or no new status is being created. To be noted, there is security in addition to this 95 lakhs in interest bearing deposit and there will be details/discussion about this infra in this order. There will also be further discussion infra as to how the rights of the parties stand nicely balanced owing to the stands taken / stated position of both sides.

This takes us to the next case law, namely ***Metro Mines***. ***Metro Mines*** again is a suit for possession and in a suit for possession, ***Dorab Cawasji*** principle was followed by Hon'ble Supreme Court and therefore, what we have said about ***Dorab Cawasji*** principle would apply to the case on hand also. It will suffice to say that ***Metro Mines*** does not come to the aid of

CUBL in its campaign against the impugned order.

This takes us to ***Kishore Kumar Khaitan*** case law in which vide paragraph 5, Hon'ble Supreme Court held that mandatory injunction is not a remedy that is easily granted and that only in circumstances which are clear and *prima facie* materials clearly justify a finding that *status quo* has been altered by one of the parties to the litigation and *status quo ante* has to be restored by way of an interim mandatory injunction. In ***Kishore Kumar Khaitan*** also facts were not articulated in the hearing and this Bench in the light of ***Padma Sundara Rao*** principle, respectfully read through ***Kishore Kumar Khaitan*** case law and we find that this is a declaratory relief suit and it turns on a rent deed qua an immovable property. Therefore, ***Kishore Kumar Khaitan*** also does not come to the aid of CUBL in its campaign against the impugned order as the facts are completely and wholly different. At the risk of repetition, we make it clear that status-quo has not been altered vide the impugned order as

i) DRT proceedings would proceed as set out in paragraph 53 of ***VCK*** principle;

ii) Rs.95 lakhs which is well over the claim of CUBL in DRT is lying (in a interest yielding deposit) to the credit of the suit;

iii) the plaintiff before the trial Court, which is R1 before this Court, has given an undertaking, on instructions, that the suit property, which is in the possession of the plaintiff company, will not be encumbered, dealt with or alienated in any manner upto 30.11.2024 which will provide adequate time for disposal of the suit in a agreed manner which we shall as set out infra;

iv) a circular of RBI dated 29.10.2021 bearing reference RBI/2021-22/116 which bars opening of Current Accounts by Banks qua customers whose credit facilities available from the Banking system reaches Rs.5 Crores or more would come in the way of further business of the plaintiff company;

v) 'Credit Information Bureau (India) Limited' ['CIBIL'] as well as the Department of Corporate

Affairs shows that this encumbrance is impeding the business development of the plaintiff. To be noted, the last two points will stand eliminated and will make the balance much finer and better as between CUBL on one side and the plaintiff on the other side. In other words while CUBL will be sitting pretty with adequate security, the plaintiff company would continue with its business without being impeded by charge qua suit property, more particularly charge in excess of 5 crores;

vi) Both parties very fairly agreed that a learned retired Judge from District Judiciary can be appointed as Commissioner for recording evidence and marking of documents so that there will be a dedicated mechanism for trial and this would expedite the disposal of the suit and every effort will be made for disposal of suit on or before 30.11.2024;

13. In the light of the fair stand taken by both sides as regards expeditious disposal of the suit, keeping in mind the avowed object of CC Act, the following order is made:

A) Mr.Paul Doss, Senior Civil Judge (Retd.,) residing at No.82/106, Perambur High Road Lane, Jamalia, Chennai-600 012 [Mob: 9443494445] is appointed as the Commissioner and the Commissioner shall record evidence in C.S.(Comm.Div.)No.178 of 2023 but will not have any adjudication powers;

B) By consent of both sides, remuneration of the learned Commissioner is fixed at a consolidated Rs.2,00,000/- [Rupees Two Lakhs only] to be shared by parties i.e., CUBL and plaintiff MIPL in equal moieties of one lakh each;

C) Arbitration and Conciliation Centre under the aegis of this Court shall facilitate the sittings pursuant to this order;

D) plaintiff has indicated that the number of witness is likely to be three and we find that the plaint documents are 89 in number. Learned counsel for CUBL (D1 and D2) submits that the number of witnesses on the side of CUBL is likely to be two and like number of documents as that of the plaintiff are likely to be marked but we make it clear that this is only indicative and parties will have full liberty to bring in oral and documentary evidence subject only to proof and relevance;

E) This Court is informed that written statement filed by CUBL is lying in objection. Learned counsel Ms.Ananda Gomathy undertakes to clear the objection and ensure that written statement is brought on Board within a fortnight from today i.e., by 08.04.2024;

F) Though obvious we make it clear that if there is any issue regarding marking of documents, the same shall be recorded by the Commissioner and the objection issue will be decided by Hon'ble single Judge presiding over Commercial Division of this Court;

G) After completion of pleadings, all proceedings as per CC Act shall be completed by the parties as expeditiously as possible and preferably on or before 30.04.2024 including CMH so that recording of evidence will commence in first week of May/June (if proceedings in summer vacation becomes a difficulty). To be noted, CMH will be subject to appointment of learned commissioner which we have made;

H) The recording of undertaking of the plaintiff company that it will not alienate, encumber or deal with the suit property in any manner till 30.11.2024 is recorded as an undertaking given by Mr.R.Ratanchand Sumerchand Bafna, son of Mr Ratanchand Bafna, Director of MIPL who is present in Court instructing his counsel and who has verified and signed the plaint on the strength of a Board resolution of MIPL dated 04.12.2022. Scanned reproduction of identity card of Mr.R.Ratanchand Sumerchand Bafna and Board resolution are as follows:

भारतीय रिज़र्व बैंक
RESERVE BANK OF INDIA
www.rbi.org.in

RBI/2021-22/118
DOR.CRE.REC.63/21.04.048/2021-22 October 25, 2021

All Scheduled Commercial Banks
All Payments Banks

Madam/Sir,

Opening of Current Accounts by Banks - Need for Discipline

Please refer to our circular DOR.No.BP.BC/7/21.04.048/2020-21 dated August 6, 2020 on the captioned subject and associated circulars thereon[1].

2. On a review and taking into account feedback received from Indian Banks' Association (IBA) and other stakeholders, it has been decided that banks may open current accounts for borrowers who have availed credit facilities in the form of cash credit (CC)/ overdraft (OD) from the banking system as per the provisions below:

(i) For borrowers, where the exposure of the banking system is less than ₹5 crore, there is no restriction on opening of current accounts or on provision of CC/OD facility by banks, subject to obtaining an undertaking from such borrowers that they shall inform the bank(s), as and when the credit facilities availed by them from the banking system reaches ₹5 crore or more.

(ii) In respect of borrowers where exposure of the banking system is ₹5 crore or more, such borrower can maintain current accounts with any one of the banks with which it has CC/OD facility, provided that the bank has at least 10 per cent of the exposure of the banking system to that borrower.

Further, other lending banks may open only collection accounts subject to the condition that funds deposited in such collection accounts will be remitted within two working days of receiving such funds, to the CC/OD account maintained with the above-mentioned bank maintaining current accounts for the borrower. In case none of the lenders has at least 10% exposure of the banking system to the borrower, the bank having the highest exposure may open current accounts. Non-lending banks are not permitted to open current accounts.

[1] DOR.No.BP.BC.27/21.04.048/2020-21 dated November 2, 2020, DOR.No.BP.BC.30/21.04.048/2020-21 dated December 14, 2020 and DOR.CRE.REC.35/21.04.048/2021-22 dated August 04, 2021

3. It is clarified that borrowers not availing CC/OD facility from the banking system shall continue to maintain current accounts as per para 1(iv) of the above mentioned circular dated August 6, 2020, as hitherto.

4. Further, banks are permitted to open/maintain the following accounts, without any restrictions placed in terms of the above-mentioned circular dated August 6, 2020, subject to meeting the conditions specified as at para 2 of DOR No.BP.BC.30/21.04.048/2020-21 dated December 14, 2020.

(i) Inter-bank accounts

(ii) Accounts of All India Financial Institutions (AIFIs) viz., EXIM Bank, NABARD, NHB, and SIDBI

(iii) Accounts opened under specific instructions of Central Government and State Governments

(iv) Accounts attached by orders of Central or State governments/regulatory body/Courts/investigating agencies etc. wherein the customer cannot undertake any discretionary debits

5. With reference to FAQ 18 of the circular dated December 14, 2020, in line with FAQ 6, banks maintaining collection accounts are permitted to debit fees/charges from such accounts before transferring the funds to the escrow account/CC/OD account of the borrower.

6. With reference to para 3 of the circular dated December 14, 2020 read with FAQ 17, it is clarified that banks shall monitor all accounts regularly, at least on a half-yearly basis, specifically with respect to the exposure of the banking system to the borrower, and the bank's share in that exposure, to ensure compliance with these instructions. If there is a change in exposure of banks or aggregate exposure of the banking system to the borrower which warrants implementation of new banking arrangements, such changes shall be implemented within a period of three months from the date of such monitoring.

7. Banks may implement the necessary changes within one month from the date of this circular. The compliance position thereon will be reviewed thereafter.

8. All other instructions contained in the circulars ibid remain unchanged.

Yours faithfully

(Manoranjan Mishra)
Chief General Manager

Reserve Bank of India ...
m.rbi.org.in

Reserve Bank of India

REGULATING COMMERCIAL BANKING

NOTIFICATIONS

[illegible]

Opening of Current Accounts by Banks

To

All Scheduled Commercial Banks

[illegible]

Opening of Current Accounts by Banks

[illegible]

Yours faithfully

[illegible]

Chief General Manager

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INDEX TO RBI CIRCULARS

Opening of Current Accounts by Banks - Need for Discipline

I) If for some reason the main suit C.S.(Comm.Div.)No.178 of 2023 is not concluded by 30.11.2024 or conclusion by 30.11.2024 is not in sight, it is open to both sides to move Hon'ble single Judge for extension of time / extension of undertaking. Hon'ble Commercial Division will consider the same on its own merits and in accordance with law untrammeled by this order.

Captioned matters are disposed of in the aforesaid manner confirming the order of Hon'ble single Judge as regards order dated 29.01.2024 in A.No.3497 of 2023 in C.S.(Comm.Div.)No.178 of 2023 which has been assailed in O.S.A (CAD) No.16 of 2024. As regards the order in A.No.6465 of 2023 in C.S.(Comm.Div.)No.178 of 2023 which has been assailed in O.S.A (CAD) No.17 of 2024, the same is disposed of as not maintainable as fairly conceded by learned Senior counsel which has been captured /set out elsewhere supra in this order. There shall be no order as to costs.

(M.S.J.) (K.G.T.J.)
25.03.2024

Index:Yes
Neutral Citation: Yes
gpa
P.S. I: *Upload forthwith*

P.S.II : *All concerned including the Registry, High Court, Madras, to act forthwith on the uploaded soft copy of this proceedings as uploaded in the official website of this Court. To be noted, the soft copies uploaded in the official website of this Court are water marked, besides being QR Coded.*

M.SUNDAR.J.,
and
K.GOVINDARAJAN THILAKAVADI, J.,
gpa

O.S.A (CAD) Nos.16 and 17 of 2024

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25.03.2024