

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO. 3211 OF 2024
AND
INTERIM APPLICATION NO. 2280 OF 2024
IN
WRIT PETITION NO. 3890 OF 2022

Raigarh Jute & Textiles Mills Ltd.	... Applicant
<u>In the matter between</u>	
Raigarh Jute & Textiles Mills Ltd.	... Petitioner
<u>Versus</u>	
Asset Reconstruction Co (I) Ltd. & Ors.	... Respondents

WITH
INTERIM APPLICATION (L) NO. 24564 OF 2024
IN
WRIT PETITION NO. 3890 OF 2022

IFCI Ltd	... Applicant
<u>In the matter between</u>	
Raigarh Jute & Textiles Mills Ltd.	... Petitioner
<u>Versus</u>	
Asset Reconstruction Co (I) Ltd. & Ors.	... Respondents

.....

Mr. Cyrus Ardeshir, Senior Advocate a/w. Mr. Gaurav Mehta i/b Bachubhai Munim & Co. for the Applicant/Petitioner.
Mr. Charles D'Souza a/w. Mr. Vinod Kothari, Mr. Kshitij Parekh and Ms. Aradhya Dixit i/b Apex Law Partners for Respondent No.2.

CORAM : **M. S. KARNIK AND**
N. R. BORKAR, JJ.
DATED : **06th AUGUST, 2025.**

P.C. :

1. This is an application for amendment of the petition. The amendment sought is at pre-admission stage. We have gone through the

averments made in the application and heard learned Senior Advocate.

2. Learned counsel for the respondent has made following submissions: -

(a) IA No. 32 of 2024 is filed by the petitioner to amend the Writ Petition and raise new grounds to challenge the grant of interest with monthly rests (instead of simple interest), in favour of R2 vide the Judgment.

(b) The petitioner preferred an Appeal against the Judgment, before the DRAT. In those proceedings, only two contentions were agitated by the petitioner viz. (a) *(a)* the guarantee was only executed between the petitioner and IDBI and since the debt of R1 (assignee of IDBI) was already settled, nothing further remained to be paid; and *(b)* guarantee was only extended as an interim arrangement and stood extinguished after R4 created a security in favour of the Lenders. The issue of alleged improper levy of interest upon the petitioner was neither pleaded nor sought to be contended by the petitioner before the DRAT.

(c) Thus, the proposed amendment to include the grounds for challenging the levy of improper or excessive interest is barred by constructive res judicata. It is settled law that a plea which was not taken in prior proceedings cannot be taken in subsequent proceedings. Thus, the IA for amendment is not tenable and ought to be dismissed at the threshold.

(d) In **Common Cause v. Union of India** (2004) 5 SCC 222, the Hon'ble Supreme Court observed:

4. We do not think that the abovesaid is a finding recorded by the learned Judge. Be that as it may, this was not a point argued before the Court when the civil appeal was taken up for hearing. A point not argued will be deemed to have been given up and cannot be permitted to be raised now by filing of such a petition.

(e) Further, in **Transmission Corpn of A.P. v. P. Surya Bhagavan** (2003) 6 SCC 353, the Hon'ble Supreme Court observed:

10. Question as to whether the respondent was overaged for entry into the service was neither raised in the written statement nor was it argued before the High Court. Under the circumstances the appellant cannot be permitted to raise this point for the first time in this Court. The second point regarding the delay in filing the petition though was raised in the written statement, but, it seems the same was not pressed before the Bench at the time of arguments. It has not been stated in the grounds of appeal that this point was raised and argued before the Bench during the course of arguments and the Bench had failed to notice the same. In view of this we decline to go into this question as well.

(f) In **Shankara Cooperative Housing Society Limited v. M. Prabhakar and Ors** (2011) 5 SCC 607, the Hon'ble Supreme Court applied the principle of constructive res judicata to High Court exercising writ jurisdiction under Article 226 and 227 of the Constitution of India. Notably, the Hon'ble Supreme Court observed:

"88. In our view, this issue need not detain us for long. This Court in **Devilal Modi v. STO** [AIR 1965 SC 1150], has observed that: (AIR p. 1152, para 8):

"8.the rule of constructive res judicata which is pleaded against him in the present appeal is in a

sense a somewhat technical or artificial rule prescribed by the Code of Civil Procedure. This rule postulates that if a plea could have been taken by a party in a proceeding between him and his opponent, he would not be permitted to take that plea against the same party in a subsequent proceeding which is based on the same cause of action; but basically, even this view is founded on the same considerations of public policy, because if the doctrine of constructive res judicata is not applied to writ proceedings, it would be open to the party to take one proceeding after another and urge new grounds every time; and that plainly is inconsistent with considerations of public policy.....”

(g) In any event, the IA for amendment suffers from delays and laches. Such contentions were not raised in the earlier amendment application filed by the petitioner. In fact, at paragraph 17 of the IA for amendment, the petitioner has admitted that “*The petitioner realised the said issue only while preparing for opposing respondent No.2’s Interim Application (L) No. 24564 of 2024 [seeking withdrawal of the sum deposited by the petitioner].*”

(h) Thus, the petitioner has admitted that the IA for amendment was only being filed as a counterblast to R2’s IA (L) No. 24564 of 2024. Such dilatory and *mala fide* tactics of the petitioner ought not to be permitted.

3. The amendment application is filed at pre-admission stage. The application deserves to be allowed. No prejudice will be caused to the respondents as the contentions raised by way of amendment can be dealt with by filing an additional affidavit-in-reply. We have not expressed any opinion on the merits of the contentions which will form subject matter of

the amended petition. Same shall be considered after the affidavit-in-reply is filed by the respondents.

4. For the reasons stated in the application and in the interest of justice, the application is allowed.

5. Amendment to be carried out within two weeks. Additional affidavit-in-reply be filed to the amended petition within one week from the date of serving of the amended copy of the petition. Amended petition be served on the respondents.

6. All contentions of the parties are kept open.

7. Interim application is disposed of.

IA 2280/24 and IAL 24564/24 in WP No. 3890/22

8. Interim application filed by the secured creditor will be considered after the amendment is carried out.

9. Request to withdraw the amount will also be considered after the amendment is carried out.

10. List on **26.08.2025**

(N. R. BORKAR, J.)

(M. S. KARNIK, J.)