

S U P R E M E C O U R T O F I N D I A  
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No.4295/1999

(From the judgement and order dated 10/02/1999 in OSA 16/99  
of The HIGH COURT OF MADRAS)

INDIAN BANK

Petitioner (s)

VERSUS

M/S.RESHMA PRODUCTIONS & ORS

Respondent (s)

(With prayer for interim relief and office report)  
( For Final Disposal )

Date : 15/12/2000 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE A.P. MISRA  
HON'BLE MR. JUSTICE B.N. AGRAWAL

For Petitioner (s) Mr. R.S. Sharma, Adv.  
Mr. V.J. Francis, Adv.  
Mr. P.I. Jose, Adv.  
Mr. Jenis Francis, Adv.

For Respondent (s)

UPON hearing counsel the Court made the following  
O R D E R

.....L.....I.....T.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave granted.  
The appeal is allowed in terms of the signed order.  
Since none appears for the respondent, cost on the parties.

.SP1

Sarita (V.P. Tyagi) @@  
AA  
COURT MASTER@@  
A AAAAAAAAAAAAA

@@  
A

(Signed order is placed on the file)

.PA

IN THE SUPREME COURT OF INDIA  
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 7386 OF 2000@@  
EEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEEE

INDIAN BANK

...APPELLANT

VERSUS

M/S. RESHMA PRODUCTIONS & ORS.

...RESPONDENTS

O R D E R@@  
CCCCCCCC

.....L.....I.....T.....T.....T.....T.....T.....T.....J  
.SP2

Leave granted.

Inspite of service made on the respondents, none appears. The present appeal is directed against the order passed by the High Court under which the appeal of the Bank was dismissed with a direction to the Bank to deposit the money within a period of one month. The appeal was preferred against the order of the learned Single Judge, directing appellant to deposit Rs.12,15,400/- into the credit of Suit No. 1005/89 (E.P.No. 52/93) in satisfaction of the decree that was passed against respondent No.2 in the said suit.

The submission for the appellant is that both, the orders passed by learned Single Judge originally and the order passed by the Division Bench of the High Court, are liable to be set aside. The appellant is not disputing that initially bank guarantee was issued for a period ending on 5.5.1993, which was extended for one year which came to an end on 5.5.1994. Thereafter as the judgment debtor neither requested for renewal nor performed its corresponding obligation for the issuance of bank guarantee. In this situation direction of the court's directing the Bank to continue with the bank guarantee or depositing the equivalent amount is unsustainable.

We have perused the impugned orders. We find that the High Court records that as per the recital in the document the bank guarantee is to be in force till the disposal of the suit. To this, Bank has no objection and it abided by this said term and the suit came to an end in 1992. Thereafter, the High Court relying on the stand of the Bank holds that the Bank guarantee stood renewed upto the 12th April, 1994. To this part also Bank have no objection. The objection relates to the period thereafter. Submission is, when no further obligation was done by the judgment debtor seeking extension of bank guarantee for a further period, bank could not have unilaterally extended it without there being any binding obligation executed by the judgment debtor. This submission has merit.

We find the High Court fell into error when it records to the following effect :

.....L....I....T.....T.....T.....T.....T.....T...J  
.SP1

"The orders of the Court cannot be allowed to be defeated by the bank taking shelter under the plea that the defendants did not request the bank and therefore, the bank is not liable."

.....L....I.....T.....T.....T.....T.....T.....J  
.SP2

In case Court, has to direct the extention of bank guarantee, it has to put the judgment debtor to perform its obligation, not only by asking for the extention of bank guarantee but by simultaneously directing it to execute such other document which is necessary for the extention of this bank guarantee. Nobody has a right to seek continuance of the bank guarantee without performing his corresponding obligation. Hence on these facts Court was not right in either extending the bank guarantee or finding faults with the bankers. We further find, the High Court fell into error when it records to the following effect :

.....L....I....T.....T.....T.....T.....T...J  
.SP1

"The negligence on the part of the bank in investigating the Credit worthiness of the parties before issuing the guarantee cannot be a ground for exonerating the bank from its liability."

.....L....I.....T.....T.....T.....T.....T.....J  
.SP3

It is one of the obligations of the bank before extending the bank guarantee, where any party seeks any bank guarantee to find the credit worthiness of the party, we do not find any error on this account with the bank. In executing bank guarantee, a bank is obliged to pay the amount on failure of the party for whom guarantee is executed. Money with the bank is a public money, direction by the court on these facts for the bank to deposit the amount cannot be sustained without judgment debtor performing its corresponding obligations.

For the reasons recorded above, we do find that the impugned order directing the Bank to continue the bank guarantee or to pay the amount cannot be sustained. Accordingly, the present appeal is allowed, the impugned order is set aside.

Since none appears for the respondents, cost on the parties.

However, any money which has been deposited in the Court in respect of the same is directed to be returned to the Bank when it makes such application.

.SP1

.....J.  
(A.P. MISRA)

New Delhi,  
December 15, 2000.

.....J.  
(B.N. AGRAWAL)