

A BANK OF INDIA
V.
NANGIA CONSTRUCTIONS (I) PVT. LTD. AND ORS.
(Civil Appeal No.1315 of 2001)

MAY 15, 2008

B [TARUN CHATTERJEE AND DALVEER BHANDARI,
JJ.]

Bank Guarantee:

C *Nationalized Bank – Unconditional on-demand bank
guarantee – Invoked during validity period of the bank guar-
antee – On facts, held: The bank was bound to honour its com-
mitment and pay the amount of guarantee – The bank refused
D – High Court was fully justified in deprecating the conduct of
Appellant-bank.*

**The bank guarantee in question was an uncondi-
tional on-demand bank guarantee. It was invoked during
E the validity period of the bank guarantee. Thereafter, an
application was filed in the Court for stay of payment un-
der the bank guarantee. To that application, the Appel-
lant-bank was not a party. Initially, an injunction was
granted by the High Court on the condition that the bank
guarantee should be kept alive. This injunction was con-
F firmed again on the condition that the bank guarantee
should be kept renewed. The constituent who had ob-
tained injunction and who was to keep the bank guaran-
tee alive, did not pay the charges of the Bank in respect
of renewals of the bank guarantees. Consequently, the
G Appellant bank refused to renew the bank guarantee and
thereafter took the stand that since the bank guarantee
was not being renewed, the bank was under no obliga-
tion to pay the amount under the bank guarantee.**

A Single Judge of the High Court however held that the invocation of bank guarantee was within the validity period of the bank guarantee and hence the Appellant bank could not have declined to make the payment. The Division Bench in the impugned judgment while dismissing the appeal observed that the bank guarantee was merely renewed under orders of the Court as there was a stay order against encashment of the bank guarantee; that once the stay order was vacated there was no question of any invocation of the bank guarantee; that in the instant case, the invocation had already taken place within the validity period and thereafter, all that was to be done was to intimate the Bank that the stay has been vacated and that payment has to be made under the bank guarantee.

In appeals to this Court, the Appellant bank contended that there was substituted agreement of contract, therefore, the invocation of the bank guarantee by Respondent No.2 was of no consequence.

Dismissing the appeals, the Court

HELD: The bank was bound to honour its commitment and pay the amount of guarantee. It is unfortunate that a nationalized bank is finding excuses for refusing to make the payment on totally untenable and frivolous grounds. The Division Bench was fully justified in making observations regarding the conduct of the nationalized bank. The entire trust, faith and confidence of people depend on the conduct and credibility of the nationalized bank. In the present day world, the national and international commercial transactions largely depend on bank guarantees. In case the banks are permitted to dishonour their commitments by adopting such subterfuges, the entire commercial and business transactions will come to a grinding halt. [Paras 13, 14] [1025-C,D, &]

The Union of India v. Kishorilal Gupta and Brothers (1960) 1 SCR 493 and *Makharia Brothers v. State of Nagaland*

A *and Ors. (2000) 10 SCC 503 – distinguished.*

CIVILAPPELLATE JURISDICTION : Civil Appeal No. 1315 of 2001

B From the final Judgment and Order dated 26.10.1999 of the High Court of Delhi at New Delhi in F.A.O. (OS) No. 81/1999

K.N. Bhat, Swigin, Akanksha, Nina Gupta and Bina Gupta for the Appellant.

C Ginny Jetley Rautray, Kanchan Kaur Dhodi, Sangeeta Kumar, Ashwani Garg and Shivangi Thagela for the Respondents.

DALVEER BHANDARI, J. 1. This appeal is directed against the judgment and order dated 26.10.1999 of the High Court of Delhi at New Delhi in FAO (OS) No.81 of 1999.

D 2. The learned Single Judge of the High Court has taken the view that the invocation of bank guarantee was within the validity period of the bank guarantee and the bank cannot decline to make the payment. The Division Bench in the impugned judgment while dismissing the appeal has clearly observed that the bank guarantee was invoked on 19th May, 1989 within the validity period of the guarantee. The bank guarantee was merely renewed under orders of the court as there was a stay order against encashment of the bank guarantee. Once the stay order was vacated there was no question of any invocation of the bank guarantee. In the instant case, the invocation had already taken place within the validity period. Thereafter, all that was to be done was to intimate the Bank that the stay has been vacated and that now payment had to be made under the bank guarantee.

G 3. The Division Bench in great anguish has observed thus:

H "It is surprising that a nationalized bank, which has given an unconditional on demand bank guarantee takes up such a contention. No ground to refuse payment was shown to the Lower Court or to us. It is surprising that Nationalized Bank wants to use delays of law in order not to

comply with its unconditional obligations under a bank guarantee. The nationalized bank should know that it is such conduct which is adversely affecting the faith of the public in banking institutions and in transaction of bank guarantee.” A

The Court dismissed the appeal with costs. B

4. The nationalized bank despite the concurrent findings of both the courts and such a strong observation of the Division Bench of the High Court has still chosen to file this appeal before this Court. Even before this Court, this is not disputed that the bank guarantee was invoked within the validity period of the bank guarantee. C

5. Mr. K.N. Bhat, the learned senior counsel appearing for the appellant bank submitted that there was a substituted agreement of contract, therefore, the invocation of the bank guarantee by respondent no.2 on 19th May, 1989 was of no consequence. D

6. It may be relevant to mention here that after the bank guarantee was invoked, an application was filed in the court for stay of payment under the bank guarantee. To that application, the bank was not a party. Initially, an injunction was granted by the High Court on 29th May, 1989. This was on a condition that the bank guarantee should be kept alive. This injunction was confirmed on 23rd April, 1990 again on the condition that the bank guarantee should be kept renewed. The constituent who had obtained injunction and who was to keep the bank guarantee alive, did not pay the charges of the Bank in respect of renewals of the bank guarantees. Consequently, the appellant bank refused to renew the bank guarantee after 26.5.1996. Thus, the beneficiary of the bank guarantee took out an application wherein the following prayer was made: E
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“In the circumstances it is, therefore, most humbly and respectfully prayed that the petitioner be directed to extend the bank guarantee for an initial period of one year and the petitioner be directed to continue to extend the bank guarantees and furnish the same to the respondent at least fifteen days before G
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A the expiry till the disputes are finally adjudicated upon by arbitration and on the failure of the petitioner to renew the bank guarantees as aforesaid the respondent may be permitted to encash the above bank guarantee.”

B 7. As the question was whether the bank guarantee was to be renewed, notice was issued to the appellant bank to remain present in the court. This was in order to find out whether they would be willing to renew the bank guarantee. The appellant bank appeared and made it clear to the court that they were not ready to renew the bank guarantee as according to them C the charges are not being paid.

D 8. The appellant bank has reiterated the same argument before this court that since the bank guarantee has not been renewed, therefore, the bank is under no obligation to pay the amount under the bank guarantee.

E 9. Learned counsel for the appellant has placed reliance on two judgments of this court, on *The Union of India v. Kishorilal Gupta & Brothers* 1960 (1) SCR 493 and *Makharia Brothers v. State of Nagaland & Others* (2000) 10 SCC 503.

F 10. In *Kishorilal Gupta (supra)*, this court has held that it was well settled that the parties to an original contract could by mutual agreement enter into a new contract in substitution of the old one.

G 11. There is no quarrel with this proposition. The parties are always at liberty to enter into afresh contract but this case has no application to the facts of the present case.

H 12. In *Makharia Brothers (supra)*, the question was : what was the State's remedy against the contractor when the contractor failed to furnish the security deposit in cash or, in lieu thereof, by a bank guarantee. The State could not have filed a suit requiring the contractor to do these things for it would have tantamount to asking for a decree of specific performance, a decree which would have been incapable of enforcement if the contractor was unable or unwilling to pay out money or put a bank

in funds to provide a bank guarantee. When the contractor declined to extend the terms of the bank guarantee, the proper course for the State was to terminate the contract on the ground of breach of the terms thereof, make a claim for damages and recover on the bank guarantee, if necessary by filing a suit.

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13. We are afraid that even this case is of no help to the appellant because the facts of the instant case are quite different. Admittedly, the bank guarantee has been invoked during the validity period of the bank guarantee. The bank guarantee was unconditional on demand bank guarantee. The bank was bound to honour its commitment and pay the amount of guarantee.

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14. It is unfortunate that a nationalized bank is finding excuses for refusing to make the payment on totally untenable and frivolous grounds. The Division Bench was fully justified in making observations regarding the conduct of the nationalized bank. The entire trust, faith and confidence of people depend on the conduct and credibility of the nationalized bank. In the present day world, the national and international commercial transactions largely depend on bank guarantees. In case the banks are permitted to dishonour their commitments by adopting such subterfuges, the entire commercial and business transactions will come to a grinding halt. This principle has been reiterated in large number of cases by this court. We do not deem it appropriate to burden this judgment by reiterating all those judgments.

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15. This appeal being devoid of any merit is accordingly dismissed with costs to be paid to respondent nos. 1 & 2.

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CIVIL APPEAL NO. OF 2008

(Arising out of SLP (CIVIL) No.3644 OF 2007)

16. Leave granted.

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17. In view of our aforesaid decision, this appeal is also dismissed with costs.

B.B.B.

Appeals dismissed

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