



NANDIWADEKAR

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

WRIT PETITION NO.620 OF 2021

Commissioners of Customs (Export) ... Petitioner

Versus

Bank of India & Anr. ... Respondents

Ms Maya Majumdar a/w Ms. Akanksha Shukla for the
Petitioner.

Mr Anant B. Shinde for Respondent No.1.

CORAM : M.S. Sonak &
Jitendra Jain, JJ.

DATED : 6 August 2025

Oral Judgment (Per M.S. Sonak, J.)

1. Heard and learned counsel for the parties.
2. The Commissioner of Customs has instituted this writ petition seeking the following substantive reliefs: -

“(a) Rule be issued

(b) This Hon'ble Court be pleased to issue a Writ of Mandamus under Article 226 of the Constitution of India directing the Respondent No. 1 to pay total amount of Rs 1,95,41,000/- Rupees One Crore Ninety Five Lakhs Fourty One Thousands only secured by it under 4 Bank Guarantees [Exhibit-"C(Colly)"] to the petitioner.”

3. Ms. Majumdar, the learned counsel for the petitioner, refers us to the Bank Guarantees at Exhibit “C(colly)”. She submits that the wording of all these Bank Guarantees is identical. She further submits that these Bank Guarantees state that they shall continue and shall not be revoked by the

surety during their currency without the consent of the Commissioner of Customs. She submits that the Bank Guarantee should be regarded as the personal guarantee of the Bank.

4. Ms. Majumdar submitted that although the 2nd respondent, at whose request the Bank Guarantees were provided, has gone into CIRP and the petitioner's claim during CIRP was rejected due to limitation, the petitioner can still pursue the reliefs, considering the wording of the Bank Guarantee and the fact that the Bank in this case was the personal guarantor.

5. Ms. Majumdar, without placing any citation on record, submitted that personal guarantees continue despite the resolution plan being finalised under the Insolvency and Bankruptcy Code, 2016.

6. Mr. Shinde learned counsel for the 1st respondent Bank submits that the Bank Guarantees expired on 31 May 2011. They were never revoked during their currency. There is no question of now raising any claim based upon expired Bank Guarantees. Such a claim was specifically raised during CIRP but was rejected. Such rejection was never challenged. He, therefore, submitted that the relief in this petition is misconceived and this petition may, therefore, be dismissed.

7. We have considered the rival contentions and perused the material on record. The material includes the Bank

Guarantees, which are now sought to be enforced after about 10 years from their expiry by instituting this writ petition.

8. The two crucial clauses of the Bank Guarantees which were relied upon by the learned counsel for the parties read as follows.

“The guarantee hereby given shall be continuing one and shall not be revoked by the surety during its currency without the consent of Commissioner of Customs. We, Bank of India, Andheri Large Corporate Branch, M.D.I. Building, 1st Floor, 28, S. V Road, Andheri (West), Mumbai - 400 058, further declare that the above subject bank guarantee will be valid up to 31/05/2011 and we undertake to renew this bank guarantee till the matter is settled and fully discharged by the Commissioner of Customs, Mumbai.

Notwithstanding anything contained hereinabove our liability under this guarantee is restricted to Rs. 1,02,11,000/- (Rupees One Crore Two Lacs Eleven Thousand Only) and this guarantee is valid upto 31/05/2011 and we shall be released and discharged from all liabilities thereunder unless a written claim for payment under this guarantee is lodged on us in writing on or before 31/05/2011 irrespective of whether or not the original guarantee is returned to us.”

9. The first clause quoted above provides that the guarantee shall be a continuing one and shall not be revoked by the surety during its currency without the consent of the Commissioner of Customs. What is crucial here is the issue of revocation of the Bank Guarantee *“during its currency.”* Admittedly, the Bank Guarantee was never revoked during its currency or even otherwise.

10. The second clause quoted above commences with a *non obstante* clause. It provides that the Bank shall be released and discharged from all liabilities “*unless a written claim for payment under this guarantee is lodged on us in writing on or before 31 May 2011 irrespective of whether or not the original guarantee is returned to us.*”

11. Admittedly, no claim, whether in writing or otherwise, was lodged by the petitioner on or before 31 May 2011. Such a claim was lodged only in 2018, i.e., almost 7 years after the expiry of the Bank Guarantee and its renewal up to 2013. In the absence of any written claim within the validity period of the bank guarantee, the Petitioner cannot now belatedly seek the enforcement of the guarantee by instituting this petition.

12. The clauses for the guarantee must be interpreted in their entirety. Therefore, by merely emphasising the first quoted clause and the reference to the expression “continuing guarantee” within it, the relief sought belatedly cannot be granted. The argument overlooks the other parts of that very clause and the subsequent clause, which begins with a *non-obstante* clause.

13. Incidentally, the petitioner also sought the same relief in the CIRP. After such relief was denied to the petitioner, there was no further challenge to the orders made in the CIRP. Ms. Majumdar, however, submitted that the petitioner has no issues with the CIRP order rejecting the petitioner's claim,

because it is admitted that such a claim was lodged after the prescribed period of limitation.

14. The argument that a personal guarantee survives the CIRP does not apply in the present case because the guarantee had expired even before the CIRP. During the validity period of the guarantee, admittedly, no claim was lodged by the petitioner. This petition was instituted almost 10 years after the guarantee expired, and that too by instituting a writ petition, probably realising that a suit would be barred by limitation.

15. In this case, we are satisfied that the petitioner is seeking to belatedly enforce a contract of Bank Guarantee. Ordinarily, no writ petitions are entertained for such purposes. However, Ms. Majumdar submitted that since the Bank is a State under Article 12 of the Constitution, we should entertain this petition.

16. Even if we were to entertain this petition, on the very face of the contract, i.e. the Bank Guarantee document, we do not think that any relief as prayed for can be granted to the petitioner.

17. The second paragraph quoted above clarifies that, notwithstanding anything contained in the previous clauses of the Bank Guarantee, the Bank's liability would arise only if a written claim was lodged with the Bank on or before 31 May 2011. No such claim was, admittedly, lodged. Lodging a claim almost 7 years after the Bank Guarantee had expired did not,

in the circumstances of the present case, oblige the Bank to honour the Bank Guarantee.

18. For the above reasons, we see no merit in this petition and dismiss the same without any order for costs.

19. After we concluded dictating the judgment in the open Court, Ms Majumdar points out that this Bank Guarantee was extended for a period of 2 years, i.e., till 2013. Assuming this is correct, still, admittedly, no demand or claim in writing was made up to 2013.

20. Therefore, even based on this belated submission, our conclusion remains the same. This petition is dismissed without any costs order.

(Jitendra Jain, J)

(M.S. Sonak, J.)