rewarding such employees is commendable. However, if the promised incentive is not given, not only the confidence of the employees in the promise of the higher authorities is likely to be shaken, but even the purpose which the incentive is likely to serve is bound to be defeated. Thus, the authorities would do well to keep their promise so that the diminishing number of disciplined employees does not dwindle. The promise which deserved to be kept in the present case has been broken for no justifiable cause.

(7) The writ petition is accordingly allowed. The respondents are directed to release the increment to the petitioner with effect from February 8, 1978 without affecting the date of normal increment. His pay should be refixed in the original as also in the revised scale of pay. Consequential reliefs in the nature of arrears of salary alongwith interest at the rate of 12 per cent per annum shall also be given to the petitioner. The needful shall be done within a period of two months from today. The petitioner is also entitled to his costs, which are assessed at Rs. 3,000.

R.N.R.

Before : A. L. Bahri & H. S. Bedi, JJ.

B. P. GUPTA,—*Appellant.*

versus

THE STATE BANK OF INDIA, NEW DELHI, AND

OTHERS,—*Respondents.*

Company Appeal No. 8 of 1986.

4th September, 1991.

Companies Act (1 of 1956)—*Ss.* 446 & 483—*Pending suit transferred to High Court for disposal—Decree passed, against which company appeal maintainable.*

Held, that since in the present case in the matter of winding up of the Company the suit pending in the Delhi High Court was transferred for disposal, any order passed in that suit would be appealable under Section 483 of the Companies Act. The present appeal is, therefore, held to be maintained under Section 483 of the Companies Act.

(Paras 6 & 7)

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(2) *Bank—Bankers have lien over moneys belonging to a customer in various accounts in different branches—Open to bank to appropriate money due in one account from money lying in another account—Such general right is subject to terms and conditions to the contrary mentioned in the contract.*

Held, that a Banker has a lien over the moneys belonging to the customer in different accounts and in the different branches of the Bank. It is open to the Bank to appropriate money due in one account from the money of the customer lying in other account. Likewas the Bank has also a right to amalgamate different accounts of the customer and recover the amount due to the Bank by filing a suit. The principle of Banker's lien in that respect is well-recognised in different judicial pronouncements.

(Para 11)

Held, that the Bank had the right to combine different accounts of the customer. While referring to the aforesaid rights of the Bank, it is to be noticed that such a right is to be governed by the terms and conditions of the contract entered into between the Bank and the customers in individual cases. In other words such a general right is subject to the terms and conditions to the contrary mentioned in the contract.

(Para 11)

(3) *Code of Civil Procedure,* 1908—*O. 7 rl. 7—Plaint—In plaint, reference made to instalment due to Bank—Accidently omitted in prayer clause—Bank to be entitled to decree in respect of instalment due.*

Held, that in the plaint reference was made to this amount as due to the Bank from the defendants, although in the prayer clause the amount of this instalment was perhaps accidentally omitted. In spite of that the plaintiff-Bank would be entitled to decree in respect of the amount of 7th instalment, which admittedly was not paid to the Bank by the borrower-company, in view of 0.7 rl. 7 of the Code of Civil Procedure and the decision of the Supreme Court in *I. L. Janakirama Iyer and others* v. *P. M. Nilakanta Iyer and others,* A.I.R. 1962 S.C. 633.

(Para 14)

(4) *Banker customer—Documents executed in respect of guarantees furnished—These guarantees provided Bank to have additional securities and guarantees which would not affect such guarantees already furnished—It is deemed that previous guarantors had given consent in writing to Bank to have additional guarantees and their liability would not be effected.*

Held, that this contention cannot be accepted as far as cash credit limit accounts are concerned. Similar documents were

executed in respect of the guarantees furnished. Those guarantees provided of the Bank to have additional securities and guarantees which would not affect such guarantees furnished. In such a case it would be deemed that the previous guarantors had given consent in writing to the Bank to have additional guarantees and their liability was not to be affected. Learned single judge was perfectly right in coming to such a conclusion on the facts of the present case.

(Para 21)

Company appeal under Section 483 of the Companies Act praying that the judgment of the learned Single Judge may be set aside and the appeal may be allowed with costs.

L. M. Suri, Sr. Advocate, with Arun Kumar, Advocate, *for the Appellant.*

R. K. Chhibbar, Sr. Advocate with M. M. Chaudhary and Anand Chhibbar, Advocates, *for the Respondent No.* 1.

Jai Shree Thakur, Advocate, *for the Respondent No.* 2.

A. K. Jaiswal, Advocate, *for the Respondent No.* 3 *to* 8.

ORDER

A. L. Bahri, J.

Vide this judgment four Company Appeals (C.A. Nos. 8 to 11 of 1986) are being disposed of as they have arisen out of the common judgment and decree dated November 1, 1985, of Company Judge in two Company Petitions (C.P. Nos. 69 and 75 of 1982). While allowing the aforesaid petitions, the Company Judge passed decree in favour of the plaintiff State Bank of India against the borrower-Company (Now in liquidation) and others, guarantors. The present appeals have been filed by the different guarantors.

(2) The borrower-Company is defendant No. 1—M/s Depro Foods Limited. It entered into an agreement with the State Bank of India, New Delhi Branch, who was to stand as guarantor for payment of the money to a foreign Company from whom M/s Depro Foods Limited was to import machinery. The price of the machinery was payable in instalments and the Company was to make payment to the State Bank of India in instalments. This agreement was entered into on June 26, 1970 and this contract is known as 'deferred payment guarantee'. Defendant Nos. 2 to 6

stood guarantors and property of defendant No. 8 was equitably mortgaged. When two instalments became due, the Bank recovered the amount of the same by debiting the amount in the account of the Company. Thereafter some more instalments fell and the company was unable to pay the amount. In the meantime the company got a cash-credit limit to the extent of Rs. 6,00,000 on February 26, 1972 in the State Bank of India Branch at Bahalgarh. This limit was increased to Rs. 6,50,000 on March 14, 1973. For the liability of this account only defendant Nos. 2 and 3 were guarantors. This account would be known as second account. The Bank debited this account in respect of four instalments of the amount of deferred payment guarantee. Another account was opened on March 16, 1974 with cash credit limit of Rs. 1,00,000. In this account only defendant No. 2 was the guarantor. The fifth account with cash credit limit of Rs. 7,50,000 was opened on March 21, 1975 and the guarantors were defendants Nos. 2, 4, 5 and 6. Subsequently, cash credit limit was increased to Rs. 15,00,000. On December 13, 1976 known as the sixth account for which defendants Nos. 2, 4, 6 and 7 stood guarantors. It was in this account that the previous accounts Nos. 2, 4 and 5 were amalgamated. Subsequently, the limit was raised to Rs. 45,00,000 on January 8, 1977 and for this account guarantors were only defendants Nos. 2 and 4. This is to be known as the seventh account. The plaintiff-Bank filed suit for the recovery of Rs. 70,26,642.23 which was pending in the High Court of Delhi. The winding-up proceedings of the borrower Company M/s Depro Foods Limited were commenced in this High Court and subsequently under orders of the Company Judge, the suit pending in the Delhi High Court was transferred to this High Court which was registered as C.P. No. 69 of 1982. During the pendency of the aforesaid petition/suit, since more instalments under 'deferred payment guarantee' became due, the plaintiff-Bank filed another suit which was registered as C.P. No. 75 of 1982 in this Court for the recovery of Rs. 208616.29 Paise. These two petitions/suits were tried together and disposed of by one judgment. C.A. Nos. 10 and 8 have been filed by defendant No. 8-B. P. Gupta in the aforesaid C.P. No. 69 and 75 of 1982, respectively, whereas other guarantors have filed appeals Nos. 11 and 9 in the aforesaid cases, respectively.

(3) A preliminary objection has been raised on behalf of the Bank that Company Appeals aforesaid are not maintainable and instead Letters Patent Appeals should have been filed on payment of *ad valorem* court-fee on the amounts involved in the appeals. It has been argued by Shri R. K. Chhibber, Advocate, that civil suit pending in the High Court at Delhi stood transferred to this

Court as such and though it was wrongly registered as C.P. No. 69, the same was disposed of by judge of this Court and not as Company Judge. The other civil suit was tried by the High Court which resulted in a decree under the provisions of the Code of Civil Procedure, Company Appeal was not maintainable and appeal under Letter Patent would be maintainable and that too on payment of *ad valorem* court-fee and not fixed court-fee under the Companies Act. This contention has no merit.

(4) Section 446 of the Companies Act reads as under :—

"446(1). When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceedings shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the Court and subject to such terms as the court may impose.

(2) The Court which is winding up the company shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of :—

(a) any suit or proceeding or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India).

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or fact, which may relate to or arise in course of the winding up of the company; whether such suit or proceeding has been instituted or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the companies (Amendment) Act, 1960.

(3) Any suit or proceeding by or against the company which is pending in any Court other than that in which the winding up of the company is proceeding may notwithstanding anything contained in any other law for the

time being in force, be transferred to and disposed of by that Court.

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court".

(5) In view of sub-section (1) of section 446 as referred to above, after order of winding up of the Company has been made by this Court, trial of the suit pending against the Company in the High Court of Delhi was not to proceed except by leave of this Court. Sub-section (2) of section 446 referred to above empowers this Court where proceedings for winding up of the Company were pending to entertain and dispose of suits against the Company. Sub-section (3) of section 446 contemplates transfer of suits pending in other courts against the Company which is being wound up in this Court. The only exception given to the aforesaid provision is contained in sub-section (4) of section 446 that no such proceedings are to be transferred where such proceedings are pending in appeal before the Supreme Court or a High Court. In the present case only suit was pending in the High Court of Delhi when order of winding up of the Company was passed by this Court. On the application of the liquidator, order of transfer of that suit to this Court was passed by this Court and hence on transfer the said suit was registered as C.P. No. 69 of 1982. Section 483 of the Companies Act reads as under :—

"483. Appeals from any order made, or decision given, in the matter of the winding up of a company by the Court shall lie to the same Court to which in the same manner in which, and subject to the same conditions under which, appeals lie from any order or decision of the Court in cases within its ordinary jurisdiction."

(6) Since in the present case in the matter of winding up of the Company the suit pending in the Delhi High Court was transferred for disposal, any order passed in that suit would be appealable under section 483 of the Companies Act as reproduced above as it relates to matter of winding up of a Company.

(7) The present appeal is, therefore, held to be maintained under section 483 of the Companies Act. The other suit was filed in the High Court itself as winding up proceedings were pending against

the Company in this Court. The suit was tried in view of section 446 of the Companies Act and the decision made therein is appealable in view of section 483 of the Act aforesaid.

(8) In C.P. No. 69 of 1982 the liability of Shri B. P. Gupta, defendant No. 8, was fixed at Rs. 2,27,466.05 paise out of the total amount of instalments Nos. 3 to 7 of the 'deferred payment guarantee' Credit was given of Rs. 62,000 which was recovered by the Bank in order to arrive at the aforesaid figure. Likewise the liability of the guarantors of 'deferred payment guarantee' was also fixed. The details are not necessary at this stage. Some of the arguments addressed related to defendant No. 8 and other guarantors of 'deferred payment guarantee' who had not stood guarantors in the subsequent agreements of cash-credit limits accounts. The reasons being recorded in respect of defendant No. 8 could also be attracted to the decision of other such guarantors.

(9) Exhibit P.1 is the agreement dated June 23, 1970,—*vide* which the Company M/s Depro Foods Limited had agreed to pay the amount of the machinery to be imported to the Bank. Exhibit P.2 is the guarantee furnished to the Bank on deposit of Rs. 6,18,390.00. Exhibit P.3 is the guarantee furnished by other defendants, namely, H. P. Mittal and others. B. P. Gupta, defendant No. 8, had hypothecated his property by equitable mortgage and that is how he is made liable for the amount aforesaid. The plaintiff-Bank relied upon the statement of account furnished to indicate that the amount of third, fourth, fifth and sixth instalments were debited to the cash credit account of the company as the Company did not pay the amount on the date the instalments fell due. The liability of defendant No. 8 is thus still subsisting with respect to non-payment of the amount of the instalments.

(10) It has been argued on behalf of the appellant-defendant No. 8 that by debiting the amount of the four instalments due under 'deferred payment guarantee' in the cash credit account of the Company, the liability of defendant No. 8 stood extinguished as by debiting the aforesaid amounts it should be treated that the amounts were paid to the Bank. This argument has also been pressed into service by learned counsel for the other guarantors of 'deferred payment guarantee' who had stood guarantee for the liability of the Company in the subsequent accounts mentioned above.

(11) A Banker has a lien over the moneys belonging to the customer in different accounts and in the different branches of the

Bank. It is open to the Bank to appropriate money due in one account from the money of the customer lying in other account. Likewise the Bank has also a right to amalgamate different accounts of the customer and recover————the amount due to the Bank, by filing a suit. The principle of Banker's lien in that respect is well-recognised in different judicial pronouncements. Some of them may be noticed. *Halesowen Presswork and Assemblies Ltd.* v. *Westminster Bank Ltd.* (1). In this case the right of adjustment of accounts and amalgamation was recognised; *Punjab National Bank* v. *Satya Pal Virmani* (2), (Punjab), Bankers lien on all the securities in favour of the Bank was recognised, *N. Mohamed Hussain Sahib* v. *The Chartered Bank, Madras and another* (3). The right of the Bank to adjust the amount of cheque collected————in the account in which money was due to the Bank was recognised. It was also observed that the Bank had the right to combine different accounts of the customer. While referring to the aforesaid rights of the Bank, it is to be noticed that such a right is to be governed by the terms and conditions of the contract entered into between the Bank and the customers in individual cases. In other words such a general right is subject to the terms and conditions to the contrary mentioned in the contract.

(12) Defendant No. 8 Shri B. P. Gupta with respect to 'deferred payment guarantee' had mortgaged his property. His liability as correctly held by learned Single Judge is to the extent of the value of the property mortgaged with respect to the amount due to the Bank from borrower-Company in respect of payment of the amounts to the foreign-Company for which the plaintiff-Bank had stood as a guarantor. Defendant No. 8 Shri B. P. Gupta is not concerned with other accounts of the defendant-Company opened and operated with any Branch or Branches of the plaintiff-Bank. Even if liability of the Company extends to the amount due under the 'cash-credit account' which is upto the limit of Rs. 45,00,000.00 (Account No. 7), defendant No. 8 cannot be burdened with any such liability. The important question for consideration as far as defendant No. 8 is concerned is as to whether the amount of the four instalments Nos. 3 to 6 which was adjusted by the Bank by debiting the same in the cash-credit account of the Company, can be recovered from him. The answer is in the negative. As in the case of first two

(1) 1970 (1) All England Reporter 33.

(2) 1956 (26) Company Cases 135.

(3) A.I.R. 1965 Madras 266.

instalments the Bank debited the account of the Company which was in the New Delhi Branch of the Bank. The amount of the four instalments subsequently falling due stood adjusted by appropriating the same from the cash credit account which was opened in Branch of plaintiff's Bank at Bahalgarh opened in 1972 of limit of Rs. 6,00,000 (Account No. 2). If cash credit limit had not been granted, and the Company had no credit balance in the Account at Bahalgarh Branch of the Bank, there would have been no occasion for appropriating the amount from such account. By making debit entries it meant that the amount had been withdrawn from the Bank from that account and paid in the account of New Delhi Branch for adjustment in 'deferred payment guarantee' account.

(13) The contention of Shri R. K. Chhibber, Advocate, is that the Bank is an entity itself and its Branches are also having independent entity. This contention has been urged with respect to the moneys due to the plaintiff-Bank from the borrowing Company although borrowing-Company may be having account in different Branches of the Bank at different stations. In the present case 'deferred payment guarantee' agreement related to plaintiff's Bank at New Delhi Branch wherein the borrowing Company was also having another running account. Subsequently at Bahalgarh Branch of the plaintiff-Bank other accounts were opened from time to time prescribing and extending cash credit limit as stated above. Accepting the argument of Shri R. K. Chhibber, Advocate, for the Bank, that the amount of the Company lying in different Branches and different accounts could be appropriated by the plaintiff-Bank in respect of the amounts due from the borrowing-Company, it has been held above that the four instalments of the amount of 'deferred payment guarantee' were rightly appropriated by the Bank against the account of the borrowing Company which was opened in Bahalgarh Branch. The further contention of Shri Chhibber is that factually the borrowing Company did not make payment of the instalments either to the new Delhi Branch of the Bank where 'deferred payment guarantee' agreement was entered into or to Bahalgarh Branch of the Bank. In order to keep the accounts straight, entries of debit were made in the cash-credit account of the borrowing Company in the Bahalgarh Branch which was debited to that extent by New Delhi Branch. For all intents and purposes the amount remained due to the Bank under the 'deferred payment guarantee' agreement. The argument appears to be fancy and attractive but the same is not enable in law, as far as defendant No. 8 and other guarantors are concerned, who did not stand guarantee in the subsequent cash credit limit accounts. Qua

them the appropriation made from cash credit limit account of the Company amounted to payment in the 'deferred payment guarantee' account of New Delhi Branch. Upto the limit sanctioned in the cash credit accounts at Bahalgarh, the borrower-Company could also withdraw the amount and then deposit the same in the New Delhi Bank Branch in the 'deferred payment guarantee account'.

(14) In C.P. No. 69 of 1982 the Bank also claimed the amount of 7th instalment of 'deferred payment guarantee'. In para 24 of the plaint reference was made to this amount as due to the Bank from the defendants, although in the prayer clause the amount of this instalment was perhaps accidentally omitted. In spite of that the plaintiff-Bank would be entitled to decree in respect of the amount of 7th instalment, which admittedly was not paid to the Bank by the borrower-Company, in view of order 7 Rule 7 of the Code of Civil Procedure and the decision of the Supreme Court in *I. L. Janakirama Iyer and others* v. *P. M. Nilakanta Iyer and others* (4). In this case it was held that in construing the plaint the Court must have regard to all the relevent allegations made in the plaint and must look at the substance of the matter and not its form. In *Mehar Chand* v. *Milkhi Ram* (5), it was held that it is the duty of the Court to mould the relief to be granted on the facts pleaded and proved. The Allahabad High Court in *Maqsood Ali* v. *Zahid Ali Sabzposh* (6), in a case where the plaintiff had claimed 1/10th share of income of waqf property was allowed decree to the extent of ¼th share without amendment of the plaint as the plaintiff was found entitled to the same. Single judge was perfectly right in decreeing the amount of 7th instalment in favour of the Bank as well as against defendant No. 8 Shri B. P. Gupta appellant and other guarantors.

(15) The amount of 7th instalment under the 'deferred payment guarantee' was not debited in the cash credit account of the borrower-Company. Such an entry was made in the protested bills account. The argument of the learned counsel for the appellant that the guarantors were not liable to pay any amount due under the protested bills account or that by making a debit entry in the protested bills account of the 7th instalment, the liability of the guarantors extinguished cannot be accepted. For clarification it

(4) A.I.R. 1962 S.C. 633.
(5) A.I.R. 1932 Lahore 401 (F.B.).
(6) A.I.R. 1954 Allahabad 385.

may be stated that protested bills account is not an account where the customer under any contract keeps any money to his credit. When the Bank finds that any account of any customer has become stale, or inoperative entries are taken to another register known as protested bill account and the Bank stops making further entries of interest due from time to time in the original account. It is only when the amount has to be claimed by filing suit that calculations are made of the interest due which are added to the amount due under the contract. The contention of the learned counsel for the appellant that the borrower-Company or the guarantors, appellant had no knowledge of the protested bills account or has no concern therewith is of no consequence. The suit of the plaintiff is based on non-payment of instalments of the amount due under the 'deferred payment guarantee' and as such is maintainable. The Bank was not supposed to keep any separate account of 'deferred payment guarantee' and even if any such account was prepared and not produced in the Court is of no consequence. The dates on which instalments fell due are mentioned in the agreements. Admittedly, the amount of the instalments were not paid on the due dates. Rest is a matter of calculation of interest as per agreement aforesaid to which the plaintiff-Bank would be entitled to in case of passing of the decree. On facts it was not disputed that the amount of 7th instalment was not paid by the borrower-Company and that the same was also not appropriated from any account of the Company. To this extent defendant No. 8 or other guarantors cannot escape liability for payment.

(16) Shri R. K. Chhibber, Advocate, has argued that the Bank could have additional guarantee even for the payment of the amount due under the 'deferred payment guarantee' account. Reference has been made to the guarantees furnished by the guarantors of the aforesaid account which do not prohibit for having additional guarantees by the Bank. The question for consideration is as to whether in fact guarantees submitted in the cash credit limit accounts from time to time were in respect of the amount due on 'deferred payment guarantee' account or not ? On perusal of those agreements of guarantees it appears that there was no reference made to the amount due under the 'deferred payment guarantee' account. Since the borrower-company was to establish the factory apart from the fact that machinery was imported from abroad and money was to be paid by the Bank in instalments, the Company also needed more funds for running the factory that it obtained cash credit limit which enhanced from time to time. The only fact to connect the 'deferred payment guarantee' account with cash credit accounts

at Bahalgarh Branch was that at one stage the amount of 4 instalments was appropriated by the Bank. Ultimately it may be noticed that the amount due under the cash credit limit formed part of the consideration of the pronotes furnished by the borrower-Company for getting enhancement in the cash credit limits. The consent of all the guarantors of the 'deferred payment guarantee' account was not taken. This is so stated because at subsequent stages all the guarantors did not stand guarantee for the amount due under different cash credit accounts. The contention of Shri Chhibber, Advocate, is that by getting more guarantors while opening cash credit limit accounts as aforesaid the Bank secured the amount due from the borrowing-Company by having additional security. This contention is devoid of merit. In the subsequent guarantees furnished with respect to the new cash credit limit account referred to above, no mention was made regarding the amounts due from the borrowing-Company earlier, that is on account of 'deferred payment guarantee'. As a matter of fact subsequent guarantees related to different new cash credit accounts opened which corelated with the limit allowed under such accounts.

(17) The contention of learned counsel for the appellant-guarantors is that by entering into subsequent contracts of cash credit limits the guarantee furnished by the guarantors in respect of 'deferred payment guarantee' agreement stood extinguished as it amounted to variation of the contract without consent of such guarantors. In support of this contention reference has been made to the judicial pronouncements on the subject. The basic decision is of privy council in *Seth Pratap Singh Moholalbhai and another* v. *Keshavlal Harilal Setalwad and another* (7). It was observed as under :—

> "The surety, like any other contracting party, cannot be held bound to something for which he has not contracted. If the original parties have expressly agreed to vary the terms of the original contract no further question arised. The original contract has gone, and unless the surety has assented to the new terms there is nothing to which he can be bound, for the final obligation of the principal debtor will be something different from the obligation which the surety guaranteed. Presumably he is discharged forthwith on the contract being altered without

(7) A.I.R. 1935 Privy Council 21.

his consent, for the parties have made it impossible for the guaranteed performance to take place".

The aforesaid decision was subsequently relied upon by the different High Court in India. Those cases may briefly be noticed as under : *Messrs, Nuserwanji Cursedji Bhesania and Co.* v. *Mahamayi Anmal and others* (8). A similar view was taken by the Division Bench of the Lahore High Court in *Prithi Singh* v. *Ram Charan Aggarwal and another* (9), and this decision was further relied upon in *Ishar Singh* v. *Ram Saran Dass and others*, (10), and in *Union of India. Ministry of Food and Agriculture (Department of Food), New Delhi* v. *Pearl Hosiery Mills and others* (11). The Bombay High Court in *Jagjivandas Jethalal* v. *King Hamilton and Co.* (12), *held as under* :—

"The rights of a surety are not to be interfered with without his consent. The effect of material alteration in the contract between the creditor and the principal debtor without reference to the surety is to discharge the surety. Giving time to the principal debtor does prejudice the rights of the surety by preventing him from paying off the creditor and then enforcing the creditor's original rights against the principal debtors".

On the same lines the other decisions of the Bombay High Court are *Keshavlal Harilal* v. *Pratap Singh Moholalbhai and others* (13), and *Parvatibai Harivallabhdas Vani* v. *Vinayak Balvant Jangam and others* (14). The Madras High Court also took the similar view in *T. N. & Q. Bank Ltd.* v. *Official Assignee, Madras* (15), and *The Indian Bank Madras* v. *S. Krishnaswamy and others* (16). The contention of learned counsel for the appellant cannot be accepted as there was no variation in the original agreement of guarantee furnished by the appellant with respect to 'deferred payment guarantee'. What the Bank did in respect of amount of four instalment numbers 3 to 6 when they became due was merely to

(8) A.I.R. 1938 Madras 585.
(9) A.I.R. 1944 Lahore 428.
(10) A.I.R. 1958 Punjab 337.
(11) A.I.R. 1961 Punjab 281 (D.B.)
(12) A.I.R. 1931 Bombay, 337.
(13) A.I.R. 1932 Bombay 168.
(14) A.I.R. 1939 Bombay 23.
(15) A.I.R. 1944 Madras 396.
(16) A.I.R. 1990 Madras 115.

debit the aforesaid amount in the cash credit account of the borrower-Company in Bahalgarh Branch and in this manner the amount was appropriated as already stated above. At that stage no question arose regarding variation in the guarantee agreement of 'deferred payment guarantee'. As already stated above the new guarantee furnished for the cash credit limit account of the borrower-company at Bahalgarh did not make any reference to 'deferred payment guarantee'.

(18) The Bank in the plaint referred to the interest payable in case of default of payment of the instalments of the amount under the 'deferred payment guarantee' at 2½ per cent. However, the agreements entered into disclose that the interest was payable at the Bank-rate minimum at the rate of 10 per cent. It seems 2½ rate was incorrectly mentioned which was payable by the Bank to the foreign-Company if there was any default in payment of the instalments. As far as payment of late deposit of the amount of instalments by the borrower-company is concerned, the interest payable was Bank-rate minimum 10 per cent. On the same ground, as discussed above, the Bank would be entitled to interest at the Bank-rate. In this context reference may also be made to section 21 (2) (e) of the Banking Regulation Act which reads as under :—

Section 21———

(2) Without prejudice to the generality of the power vested in the Reserve Bank under sub-section (1), the Reserve Bank may give directions to banking companies. either generally, or to any banking company or group of banking companies in particular, as to".

(e) the rate of interest and other terms and conditions on which advances or other financial accommodation may be made or guarantees may be given".

The plaintiff bank is entitled to interest under the aforeaid provisions of the Act. On the ground that the interest claimed is excessive, the claim of the Bank cannot be refuted. In *Konakalla Venkata Satyanarayana (died) and others* v. *State Bank of India and others* (17), it was held that there cannot be any presumption that under the Usurious Loans Act that the Bank was charging excessive interest, if agreement allowed interest with monthly rests. The Madras High Court in *Indian Bank, Tiruyannamalai* v. *V. A.*

(17) A.I.R. 1975 A.P. 113.

Balasubramania (18), held that the Usurious Loans Act and the Banking Regulation Act are two separate enactments to operate differently. The charging of interest by the Bank under the Banking Regulation Act is not controlled by the other Act. It was held that the provisions of the Banking Regulation Act alone regulate the rate of interest on advances by the nationalised banks.

(19) Thus in the present case the plaintiff-Bank could legitimately claim interest at the Bank-rate as agreed upon subject to the minimum provided in the agreements.

(20) The other guarantors have also filed appeal against the decrees passed against them in C.P. No. 69 of 1982. That appeal is by defendants Nos. 2 to 6. These defendants stood guarantors in the 'deferred payment guarantee' accounts. They are also entitled to the benefit of adjustment of the amount of four instalments in the cash credit account as far as 'deferred payment guarantee' account is concerned. Those of them who stood guarantee in the cash credit account also would, of course, be liable to the extent of such guarantees furnished in such accounts. As already stated above, defendants Nos. 2 and 4 stood guarantors in the 7th cash credit account with Rs. 45,00,000 limit. These defendants would otherwise be liable for the amount due in the cash credit account which also includes the amount of four instalments of the 'deferred payment guarantee' account. Their liability is the same as that of defendant No. 1. Defendant No. 3 was only a guarantor in the cash credit limit account to the extent of Rs. 6,50,000 which was Account No. 2. Though this account was subsequently merged when 6th account was opened, his liability would be to the extent of Rs. 6,50,000 total in the cash credit limit account, apart from his liability under the original guarantee submitted to the 'deferred payment guarantee' account with respect to 7th instalment which was not paid. Defendant No. 5 stood guarantor to the cash credit limit account which was upto the limit of Rs. 7,50,000 (account No. 5). His liability was rightly fixed by the single judge. Defendant Nos. 6 and 7 stood guarantors in the cash credit limit account of Rs. 15,00,000 (Account No. 6). Their liability would be to that extent in the cash credit limit account whereas liability of defendant No. 6 in the 'deferred payment guarantee' account would also be there in respect of the amount due with respect to amount of 7th instalment.

(21) On behalf of the appellants it was argued that as and when cash credit limit was increased and new documents were executed including fresh pronotes and endorsements made thereon in favour

(18) A.I.R. 1982 Madras 296.

of the Bank, the previous agreements, guarantees furnished became part of the history and cannot be enforced. This contention cannot be accepted as far as cash credit limit accounts are concerned. Similar documents were executed in respect of the guarantees furnished. Those guarantees provided of the Bank to have additional securities and guarantees which would not affect such guarantees furnished. In such a case it would be deemed that the previous guarantors had given consent in writing to the Bank to have additional guarantees and their liability was not to be affected. Learned Single Judge was perfectly right in coming to such a conclusion on the facts of the present case.

(22) The machinery of defendant No. 1 M/s Depro Foods Limited was sold during pendency of the suit. The amount of the sale proceeds was to the tune of more than Rs. 3,90,790. It has been argued on behalf of defendant No. 8 as well as other defendants-guarantors that this amount is to be adjusted against their liability. In principle this stand is not disputed on behalf of the Bank. Since the present appeals are against the preliminary decree and a final decree is yet to be passed, this amount can be adjusted at the time of passing of the final decree.

(23) Two appeals have been filed by defendant No. 8 and the guarantors in C.P. No. 75 which related to the amount of the remaining instalments of the 'deferred payment guarantee' agreement by the aforesaid appellants respectively. Since this amount was not paid by defendant No. 1 or the guarantors at any time, the Bank is entitled to the same against the Company as well as the guarantors and defendant No. 8 subject to what has been stated above regarding adjustment of the sale proceeds of the machinery of the Company, a final decree would be passed in this case as well.

(24) It has been argued on behalf of the appellants that the appellants cannot be made liable for the amount of 3rd account which was clean term loan to the extent of Rs. 5,00,000 and for which the appellants never stood guarantors. Likewise arguments have been addressed in respect of account No. 4 cash credit limit to the extent of Rs. 1,00,000 in which only defendant No. 2 had stood the guarantor. There is no merit in these contention. As already discussed above, the Bank has a right of appropriation of amount of one account from the other. The Bank could amalgamate such accounts and got it further secured by having additional guarantees. It was so done in the present case.

(25) For the reasons recorded above, appeals filed by defendant No. 8 in both the suits are allowed. The Judgments and decrees of the Single Judge are modified. In C.P. No. 69 of 1982 the suit shall stand dismissed *qua* defendant No. 8, B. P. Gupta. Defendant No. 8 was liable to pay the amount of the 7th instalment i.e. Rs. 55, 233.03 p. A sum of Rs. 62,000 deposited by the borrower-Company was to be adjusted and in this manner a sum of Rs. 6766.97 paise was still in excess. The amount of four instalments, as already held above, cannot be recovered from him in the 'deferred payment guarantee' account. This excess amount as found above can well be adjusted in the other suit along with the sale proceeds of the machinesy. Thus in this suit (C.P. No. 69 of 1982) decree passed against him stands set aside.

(26) Civil Appeal No. 11 of 1986 has been filed by defendant Nos. 2 to 6 in C.P. No. 69 of 1982. The appeal of defendant No. 2 stands dismissed as he is liable for the amount found due from defendant No. 1 to the extent he stood guarantee for the 7th account to the extent of Rs. 45,00,000.

(27) The appeal of defendant No. 3 would stand partly allowed. He is to be given benefit of appropriation of amounts of four instalments in cash credit account. Thus in 'deferred payment guarantee' account his liability is to the extent of the amount of 7th instalment of Rs. 55,233.03 p. and the amount of the guarantee furnished in the second account i.e. Rs. 6,50,000 total being Rs. 7.05,233.03. Out of this amount he is to get credit for the sum of Rs. 62,000 deposited by the borrower-Company leaving a benefit of Rs. 6,43,233.03 p. To that extent the judgment and decree of the Single Judge is modified. It may be stated that at the time of passing of the final decree adjustment of the amount of sale proceeds of the machinery would be taken into effect.

(28) The appeal of defendant No. 6 is to be partly allowed. In final account No. 6 his liability has been fixed at Rs. 44,04,504.63 p. In the 'deferred payment guarantee' account he is liable to pay seventh instalment also an amount of Rs. 55,233.03, total being Rs. 44,59,737.66. To that extent a decree against him is passed for this amount. To that extent judgment and decree of the Single Judge is modified.

(29) The appeal (C.A. No. 11) of the other defendants stands dismissed.

(30) Civil Appeal No. 8 of 1986 has been filed in C.P. No. 75 of 1982. The amount found due by the Single Judge has been rightly fixed. However, at the time of passing of the final decree the Court will adjust a sum of Rs. 6,766.97 p. which has been found excess while deciding Civil Appeal No. 10 of 1986 filed by defendant No. 8, B. P. Gupta, appellant. He will also be given adjustment for the amount of sale proceeds of the machinery. To that extent the judgment and decree of the Single Judge stands modified.

(31) Civil Appeal No. 9 of 1986 of C.P. No. 75 of 1982 is dismissed with the observation that the amount of the sale proceeds of the machinery would be adjusted at the time of passing of the final decree.

(32) The parties in all these appeals are left to bear their own costs.

J.S.T.

Before : N. K. Sodhi, J.

DR. GURBACHAN SINGH BAJWA,—*Petitioner.*

versus

THE PUNJAB AGRICULTURAL UNIVERSITY, LUDHIANA,—*Respondent.*

Civil Writ Petition No. 2005 *of* 1988.

22nd August, 1991.

Haryana and Punjab Agricultural University Act, 1970—*S.* 20, *Statutes* 3 & 4—*Appointment—Selection process—Provisions empowering Vice Chancellor either to make single recommendation for approval of Board of Management or to appoint a Selection Committee to recommend three names—Vice Chancellor also competent to recommend a person other than those recommended by Selection Committee—Selection Committee recommending only two names to V.C.—Selection process does not end with mere recommendations by Selection Committee—It completes only when recommendee gets approval of the Board of Management on being recommended by V.C.—No right accrues to petitioner to claim appointment otherwise.*

Held, that it is only when the recommendation of the Vice-Chancellor has been approved by the Board of Management that the