IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
COMMERCIAL ARBITRATION PETITION NO.370 OF 2024
WITH
INTERIM APPLICATION NO.7392 OF 2025

TJSB Sahakari Bank Ltd. *.....Petitioner*

: Versus :

Amritlal P Shah *....Respondent*

Mr. Shadab Jan with Mr. Nikhil Rajani and Mr. Ajay Deshmane i/b M/s. V. Deshpande & Co.*for the Petitioner.*

Mr. Sharad Bansal i/b Mr. Laxman I. Jain *for the Respondent.*

CORAM: SANDEEP V. MARNE, J.

Reserved On: 03 December 2025.

Pronounced On: 19 December 2025.

Judgment:

1) The Petition challenges the Award of the learned sole Arbitrator dated 2 May 2024 under Section 34 of the Arbitration and Conciliation Act, 1996 **(Arbitration Act)**. By the impugned Award, the learned Arbitrator has held that the Respondent is entitled to recover amount of Rs.4,05,558/- on account of four fixed deposit receipts in possession of the Petitioner-Bank w.e.f. 19 March 2001 and total of Rs.14,07,409/- received under eight LIC policies from the date of maturity of each policy with 17.5% interest p.a. with quarterly rests till the date of the Award. The learned Arbitrator has further directed that upon failure to pay the awarded sum and interest, the same shall carry additional interest of 1% p.a. with

quarterly rests till realisation. The learned Arbitrator has also awarded costs of arbitration to the Respondent.

2) Petitioner is a Multi-State Co-operative Bank registered under the Multi State Co-operative Societies Act, 2002 **(MSCS Act)**. Petitioner-Bank had extended financial facilities to M/s. A. S. Constructions from time to time. In order to secure those facilities, Respondent is alleged to have furnished personal guarantee and had also created security interest by creating charge over flat, LIC policies and fixed deposit receipts. In the year 2001, Petitioner-Bank filed Dispute before the Co-operative Court for recovery of dues against the principal borrower and the Respondent in his capacity as guarantor/security provider. Correspondingly, Respondent also filed independent Dispute Application No.605 of 2005 before the Co-operative Court, Thane for release of security documents, as well as for discharge of its guarantee. By two separate orders dated 25 October 2017, the Co-operative Court allowed Petitioner-Bank's Dispute Application while rejecting Respondent's Dispute Application. Respondent filed appeal before the Co-operative Appellate Court in respect of order arising out of his Dispute Application No. 605 of 2005, which appeal was dismissed on 26 November 2018. Review Application filed by the Respondent was also rejected on 31 March 2022. So far as order dated 25 October 2017 passed in Bank's Dispute Application No. 327 of 2005 is concerned, Respondent preferred Appeal before the Co-operative Court. According to the Petitioner, the Appeal was filed urging only the ground of discharge of guarantee under Section 139 and 141 of the Indian Contract Act, 1872 and Respondent did not raise the issue of coercion in securing handwritten letter dated 7 April 1998. The appeal preferred by the Respondent was allowed by the Co-

operative Appellate Court holding that guarantee furnished by the Respondent stood discharged. Based on the order passed by the Co-operative Appellate Court, Respondent invoked arbitration against the Petitioner under Section 84 of the MSCS Act and filed his Statement of Claim for recovery of amount of fixed deposit receipts and LIC policies. The learned sole Arbitrator has allowed the claim filed by the Respondent by impugned Award dated 2 May 2024 directing the Petitioner to pay sum of Rs.4,05,558/- in respect of fixed deposit receipts and Rs.14,07,409/- in respect of LIC policies along with interest of 17.5% p.a. Aggrieved by the impugned Award, the Petitioner-Bank has filed the present Petition.

3) Mr. Shadab Jan, the learned counsel appearing for the Petitioner would submit that the impugned Award is contrary to fundamental policy of India as the learned sole Arbitrator had readjudicated the issue of coercion which was already conclusively determined by the Co-operative Court and whose findings have attained finality. That the issue of coercion thus operated as *res judicata* and could not have been re-adjudicated by the Arbitral Tribunal. That the issue of *res judicata* though not reflected in the pleadings and though a specific issue was not framed, the Arbitral Tribunal has ultimately decided the objection. That therefore the Petitioner is entitled to urge the ground of *res judicata* in the present Petition. He would submit that failure to plead the objection of *res judicata* in the Statement of Defence is not fatal, as held by the Apex Court in ***V. Rajeshwari vs. T.C. Saravanabava***[1]. He also relies upon judgment of the Apex Court in ***State of Punjab vs. Bua Das Kaushal***[2] in support of his contention that in absence of pleading or omission

1 (2004) 1 SCC 551

2 (1970) 3 SCC 656

to frame a specific issue, plea of *res judicata* cannot be treated to have been waived.

4) Without prejudice to the objection of *res judicata*, Mr. Jan would submit that the Award otherwise suffers from patent illegality in recording the finding that letter dated 7 April 1998 was obtained through coercion. That the said finding was arrived at by the learned Arbitrator only on the basis of alleged failure by the Petitioner to deny the allegation of coercion in correspondence. He would invite my attention to cross-examination of Respondent in support of his contention that the letters dated 22 April 1998 and 23 April 1998 are not proved to have been served on the Petitioner and that therefore there was no occasion for denial of allegation of coercion. That the impugned Award ignores vital evidence and accordingly suffers from patent illegality as held by the Apex Court in ***Ssangyong Engineering and Construction Company Limited vs. National Highways Authority of India (NHAI)***[3].

5) Mr. Jan would further submit that the award of interest by the learned Arbitrator @ 17.5% p.a. is dehors the prayer in which interest only of 13.5% p.a. was claimed. That the learned Arbitrator could not have invoked the principle of 'demand of justice' for award of interest contrary to the prayer of the Petitioner. That in any case, since claim of the Respondent is in the nature of damages, question of granting pre-arbitration interest or interest *pendente lite* does not arise. On above broad submissions, Mr. Jan would pray for setting aside the impugned Award.

6) Mr. Bansal, the learned counsel appearing for the Respondent would oppose the Petition submitting that plea of *res*

3 (2019) 15 SCC 131

judicata raised by the Petitioner is completely misplaced as the said plea was never raised in the Statement of Defence. That it is settled law that plea of *res judicata* must be raised in the pleadings and in support, reliance is placed on judgment of the Apex Court in ***Prem Kishore and Ors. vs. Brahm Prakash and Ors.***[4]. That Petitioner has not even bothered to produce Dispute Application filed by the Respondent in Dispute No. 605 of 2005 or filed by the Petitioner in Dispute No. 327 of 2005. That in absence of pleadings before the court in the said Dispute Application, the plea of *res judicata* can otherwise not be demonstrated or proved. That proving *res judicata* requires determination of the case put by the party in the previous proceeding and then to find out as to what has been decided by the judgment which is allowed to operate as *res judicata*. He would submit that in ***Prem Kishore*** (supra), the Apex Court has relied on judgment in ***V. Rajeshwari*** (supra) in which it is held that pleadings in the previous round of litigation must be on record and that it is risky to speculate about the pleadings. Even on merits, Petitioner's plea of *res judicata* is misplaced as issues in two sets of litigation must be identical. That in Dispute Application No. 605 of 2005 and 327 of 2005, the Co-operative court had not framed any issue about coercion. That mere reasonings of Co-operative Court adopted to render its findings on other issues framed before it would not constitute *res judicata* as held in ***Nand Ram vs. Jagdish Prasad***[5]

7) That even on merits, the findings of the Arbitral Tribunal on the issue of coercion are justified. That the Arbitral Tribunal has examined the evidence on record for rendering its findings on coercion. That there is no element of perversity in the said findings. That Petitioner's contention of failure to prove delivery of letters

4 (2023) 19 SCC 244

5 (2020) 9 SCC 393

dated 22 April 1998 and 23 April 1998 is baseless as Petitioner never denied receipt of the same in pleadings. That in absence of specific pleading, evidence cannot be considered. That since there was no denial in the pleading, it was not necessary for the Respondent to prove delivery of those two letters. In any case, letter dated 23 April 1998 contained noting by the official of the Petitioner, thereby establishing its receipt.

8) Mr. Bansal would further submit that mere setting aside of order of the Co-operative Appellate Court by this Court in Writ Petition No. 2679 of 2023 cannot have any effect on the finding on coercion. That the Award is not passed merely on the strength of the order passed by the Co-operative Appellate court and that the learned Arbitrator has made an enquiry into the factual aspect of coercion. That in any case, order passed by this Court in Writ Petition No. 2679 of 2023 is subject matter of challenge of Special Leave Petition No. 69567 of 2025. Lastly, Mr. Bansal would submit that in case the interest of 17.5% p.a. is found not justifiable, this Court can modify the rate of interest rather than setting aside the entire Award. He would accordingly pray for dismissal of the Petition.

9) Rival contentions of the parties now fall for my consideration.

10) Petitioner's main ground of attack to the Award is that the adjudication of the issue is barred by principles of *res judicata*. According to the Petitioner, Dispute Application No. 605 of 2005 filed by Respondent for release of security documents and for discharge of guarantee specifically involved the issue of obtaining

handwritten letter dated 7 April 1998 through coercion. Order dated 25 October 2017 passed in Dispute Application No.605 of 2005 has attained finality on account of dismissal of Appeal by the Co-operative Appellate Court and on account of rejection of application for review by the Co-operative Appellate Court. It is also contended by the Petitioner that the issue of coercion has also been decided, to some extent, by the Co-operative Court in Petitioner-Bank's Dispute No. 327 of 2005 by the judgment and order dated 25 October 2007 and that though the Respondent challenged the order passed in Dispute No. 327 of 2005, the challenge before the Co-operative Appellate Court was only to the extent of discharge of guarantee and that the finding of coercion was not challenged before the Co-operative Appellate Court.

11) This is how the Petitioner-Bank contends that the issue of coercion in securing handwritten letter dated 7 April 1998 has attained finality by way of orders passed by the Co-operative Court in Dispute Application Nos. 605 of 2005 and 327 of 2005. It is therefore contended that it was not open for the Respondent to raise the very same issue in arbitral proceedings on account of application of principles of *res judicata*.

12) In his Statement of Claim filed before the Arbitral Tribunal, Respondent raised following pleadings :

> 5. The applicant had also filed a dispute no CCV/144 of 2001 in the Fifth Cooperative Court at Mumbai, upon its transfer to Cooperative Court Thane it was renumbered CCT/605 of 2005. Proceedings in both the disputes revealed as follows.
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> > a) Applicant was surety to A. S. Construction proprietary concern for a project finance of Rs 30.00 Lakhs (Rs Thirty Lakhs). The opponent had granted the said finance on the condition of two sureties, however against applicant's surety alone the opponent disbursed the funds. The principal borrower defaulted; therefore,

the opponent filed dispute and then withdrew it. In any event, A. S. Construction proprietary concern converted itself into a partnership firm on 8th January 1998. Consequence was discharge of applicant's guarantee; as the principal borrower itself did not exist, applicant's guarantee also ended. Certified copy of evidence of bank witnesses Mr Shende and Mr Velankar is enclosed at Sr. no. 5 of list of documents accompanying this dispute.

b) Applicant by Advocate's letter dated 16th September 1997 requested return of securities of two flats' title deeds and eight insurance policies as the overdraft facility's negative balance was negligible. Certified true copy of letter of Advocate dated 16th September 1997 is enclosed at Sr. no. 6 of the list of documents accompanying this dispute. The opponent did not respond to the said letter.

c) Therefore, applicant called on Mr Chalke Vartak Nagar Branch Manager of opponent to seek his advice to get back the flats' title deeds as also insurance policies from the opponent, as the applicant's overdraft facility was totally liquidated on 9th January 1997. After hearing the applicant Mr Chalke made him sit for a while in the branch office. Around 12:00 noon or so Mr Velankar arrived at the Vartak Nagar branch office. Again, Applicant had to narrate his case to Mr Velankar, Mr Velankar advised applicant to make out a letter as per his draft. Mr Velankar made out a draft letter to the opponent in his own hand writing on a small piece of paper and passed it on to Applicant. Applicant protested for the draft contained a false statement that he was guarantor to M/s A. S. Construction's loans. If not, he threatened that opponent would not release any of his securities. Then in the discussion he misled applicant by saying that he knew that applicant was only a personal guarantor to A. S. Construction proprietary concern of Mr Surendra Pratap Yadav and further threatened that unless applicant made out a letter per his draft opponent would not release any of the securities. He further misled the applicant that if applicant wrote the letter per his draft the opponent would release the flats' title documents and policies of insurance. Mr Chalke supported Mr Velankar and persuaded the applicant to make out letter per Mr Velankar's draft. Mr Chalke said Mr Velankar being the head of the recovery department his say on this matter would be important, so under coercion and misleading and as Mr Velankar was head of recovery department and without seeking his opinion the opponent may not act on applicant's letter, applicant made out a letter per draft and handed it over to Mr Chalke. Certified copies of Mr Velankar' s draft and applicant's letter dated 7th April 1998 are placed at Sr. No. 7 and Sr. No. 8 of the list of documents accompanying this dispute. Mr Chalke and Mr Velankar both assured me that both of them would see to it that securities of title deeds of two flats and eight insurance policies are returned and applicant should enquire with Mr Chalke on phone after 10 to 15 days. Accordingly, applicant enquired with Mr Chalke couple of times after 10 days telephonically. On 3rd or 4th call Mr Chalke asked applicant to visit him on 21st April 1998. Copy of Applicant's examination in chief on affidavit in dispute no 327 of 2005 is placed at Sr. No. 9 of the list of documents accompanying this

dispute. Applicant visited Vartak Nagar branch on 21st April 1998 along with his then Accountant Mr Modi. Mr Chalke made us sit for a while. Mr Velankar arrived at the branch office. Applicant, Mr Modi, Mr Velankar, and Mr Chalke sat in his cabin. Both Mr Velankar and Mr Chalke asked applicant to sign some printed and type written forms in blank or threatened that they would not release the securities. Under coercion applicant executed those documents in blank. Then Mr Chalke banded me over a covering letter and two flats title deeds and other accompanying documents therewith and told that the insurance policies were at another office which Mr Velankar would send them through his peon and till then applicant should wait. Applicant and Mr Modi waited until 6:00 p.m. but no peon arrived with the insurance policies. At 6:00 p.m. Mr Chalke came out of his cabin and told the applicant to read the letter and went back to his cabin. Applicant tried to meet him but he refused and asked the applicant to read the letter and thereafter applicant and Mr Modi left the branch office. Then applicant called up his Advocate Bhambhlani on phone and narrated him about what had happened at the branch office. Advocate asked the applicant to call on him at his office at around 10:30 next day. Applicant did so. Advocate Bhambhlani made out a letter per the instructions of the applicant and specifically demanded the return of the documents signed under coercion and in blank and faxed the letter to the opponent. Advocate Bhambhlani' s letter dated 22nd April 1998 is placed at Sr. No. 10 of the list of documents accompanying this dispute. Advocate Bhambhlani under applicant's instructions made out another letter dated 23rd April 1998. The said letter also demanded the return of the documents in print form and type written signed in blank under misrepresentation and coercion by the applicant. The said letter is placed at Sr. No. 11 of the list of documents accompanying this dispute. The said letter bears an endorsement of higher officers to Mr Chalke Manager to contact Advocate V M Kulkarni and arrange for reply immediately. Despite such an endorsement and also an identical endorsement on letter at Sr. No. 6 of the list of documents, the concerned officer / employee of the opponent did not take any steps to do so. In fact, all letters of Advocate Bhambhlani under instructions of Applicant at Sr. No. 6, 10 & 11 are neither replied to or nor have complied with--the requisitions there in. This is nothing but a deliberate contravention of the provision of Section 72 of Contract Act 1872. Instead, the documents signed by the applicant in print form and type written in blank have been filled in by somebody else in his handwriting, anti-dated to 31 March 1998, and were produced in proof of opponent's case that of applicant being guarantor to A. S. Construction partnership firm for project finance loan of Rs 30.00 Lakhs; not only that but the opponent has also made out an additional case that applicant had pledged the Bank Guarantees towards his guarantee to A. S. Construction. Certified copies of the impugned documents are placed at Sr. No. 12 (a) Application for advance against deposits 12 (b) pledge of the deposits 12 (c) letter of acknowledgement of debt 12 (d) type written letter to opponent 12 (e) promissory note 12 (f) letter of lien and set off of the list of documents accompanying this dispute.

> But the applicant has not signed the loan agreement which is placed at Sr. No. 13 of the list of documents accompanying this dispute. Further the promissory note is also not signed by the applicant that is placed at Sr. No. 14 of the list of documents accompanying this dispute. However, a promissory note is signed by the applicant alone as also a letter of lien and set off is also signed by applicant alone. However, both these documents are anti dated to 31st March 1998.

13) Thus, detailed pleadings were raised in the Statement of Claim to demonstrate misrepresentation and coercion in procuring the letter dated 7 April 1998.

14) Respondent filed Statement of Defence before the Arbitral Tribunal responding to the contents of paras-5(a) to (c) as under :

> 3.4 As to Point No.5 a), it is stated by the Applicant that A.S. Construction converted into partnership firm as on 8th January 1998. And then he claims discharge of his surety due to non-existence of the Borrower. But it must be noted that the Letter of Lien and Set Off as exhibited at 12F by the Applicant is executed as on 31/03/1998. Further, it si explained above in point no. 4.3 here as to how the said letter authorizes the Opponent for recovery of the sum.
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> 3.5 As to Point No.5 c), The Opponent states that denial of execution of documents by the Borrowers and/or Guarantors is not a new case. Hence, the contentions of the Applicant that the documents are filled by someone else etc. are baseless and do not have any footing of law or facts. Further, Ex. 12 D by the Applicant clearly states that he was aware of the change in the nature of business entity of the Borrrower - A. S. Construction and also has acknowledged the outstanding amounts for various loan facilities as on 31/03/1998. *Hence, he cannot approbate and reprobate at the same time.*

15) In its entire Statement of Defence, Petitioner did not raise the plea of *res judicata*. *Res judicata* is essentially a rule of estoppel based on public policy aimed at achieving finality to litigation. It prohibits a Court from trying any suit or issue in which the matter directly and substantially in issue was also directly and substantially in issue in the former suit between the same parties and such issue has been heard and finally decided by the Court.

Thus, for the purpose of adjudicating on the issue of res judicata, it is necessary that the same issue has been adjudicated in the former suit.

16) In ***V. Rajeshwari*** (supra) relied upon by the Petitioner, the Apex Court has highlighted the need for foundational pleading for deciding the issue of *res judicata*. The Apex Court has held in para-12 as under :

> 12. The plea of *res judicata* is founded on proof of certain facts and then by applying the law to the facts so found. **It is, therefore, necessary that the foundation for the plea must be laid in the pleadings and then an issue must be framed and tried. A plea not properly raised in the pleadings or in issues at the stage of the trial, would not be permitted to be raised for the first time at the stage of appeal** [see *(Raja) Jagadish Chandra Deo Dhabal Deb* v. *Gour Hari Mahato* [AIR 1936 PC 258 : 1936 All LR 786] , *Medapati Surayya* v. *Tondapu Bala Gangadhara Ramakrishna Reddi* [AIR 1948 PC 3 : (1947) 2 MLJ 511] and *Katragadda China Anjaneyulu* v. *Kattaragadda China Ramayya* [AIR 1965 AP 177 : (1965) 1 An LT 149 (FB)]]. The view taken by the Privy Council was cited with approval before this Court in *State of Punjab* v. *Bua Das Kaushal* [(1970) 3 SCC 656]. **However, an exception was carved out by this Court and the plea was permitted to be raised, though not taken in the pleadings nor covered by any issue, because the necessary facts were present to the mind of the parties and were gone into by the trial court. The opposite party had ample opportunity of leading the evidence in rebuttal of the plea. The Court concluded that the point of *res judicata* had throughout been in consideration and discussion and so the want of pleadings or plea of waiver of *res judicata* cannot be allowed to be urged.**
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> *(emphasis added)*

17) However, in ***V. Rajeshwari***, the Apex Court has also recognised an exception where plea of *res judicata* can be raised though not taken in pleadings nor covered by the issue, where necessary facts were present to the minds of the parties and were gone into by the trial Court and the opposite party had ample opportunity for leading evidence in rebuttal of plea. The Apex Court has held that where point of *res judicata* had throughout been in consideration and discussion, mere want of pleading cannot be a

ground for raising the plea of waiver and *res judicata*. In ***V. Rajeshwari***, the Apex Court has followed the ratio of judgment in ***State of Punjab v/s. Bua Das Kaushal*** (supra). In case before the Apex Court, Writ Petition challenging punishment of dismissal of the Sub Inspector of Police had been dismissed and the issue before the Apex Court was whether dismissal of the Writ Petition would operate as *res judicata* in a subsequent suit and whether the plea of *res judicata* could have been treated to have been waived. The Apex Court held that decision in writ petition would operate as *res judicata* in subsequent suit. So far as waiver of plea of *res judicata* is concerned, the Apex Court has held that though no specific plea was taken in the Written Statement nor was any issue framed before the Trial Court, the necessary facts were present to the minds of the parties and were gone into by the Court. In the facts of that case, the Apex Court held that the plea of *res judicata* cannot be treated to have been waived. The Apex Court held in para-6 as under:

> 6. The only point which remains for disposal is whether the principle of res judicata could be waived and was actually waived in the present case. In *Medapati Surayya* v. *Tondapu Bala Gangadhara Ramakrishna Reddi* [AIR 1948 PC 3, 7 : 1947 ALJ 620 : 1947 (2) MLJ 511 : 1948 OWN 37 : 2 DLR 338] Their Lordships observed "... there was no issue on this point and the question of res judicata has to be specially pleaded. The record shows that this question was not argued before the High Court and before the trial court, Respondent 1's pleader argued exactly the contrary of his present argument, namely, that the decision in the previous suit could not operate as res judicata. That was obviously because two of the findings in that suit were in favour of the alienees. Their Lordships are therefore, unable to accept this argument". The position in the present case is entirely different. Although no specific plea was taken in the written statement nor was any issue framed before the trial court but the necessary facts were present to the mind of the parties and were gone into by the court. It was stated in the judgment of the trial court that the plaintiff before seeking the remedy of filing a regular suit had moved the High Court in the writ petition. The judgment in the writ petition had been placed on the record. After referring to a decision of the Orissa High Court in *Bhupinder Kumar Bose* v. *State of Orissa*, [AIR 1960 Ori 46 : 1959 ILR Cut 203] in which the view was expressed that a judgment in a writ petition was binding and conclusive between the parties, the trial court held that the previous judgment in the writ petition was binding on the

> parties in the present case. The judgment of the first appellate court was on similar lines. When the appeal came before D.K. Mahajan, J., on May 13, 1963, he particularly noticed the decisions of the courts below in respect of the bar of res judicata but since it had been argued before him that in the absence of a specific issue prejudice had been caused to the present respondent he framed the two issues which have been mentioned before and called for a report on those issues from the trial court. There the respondent had ample opportunity to lead evidence relevant to those issues. We are wholly unable to understand how, in the above circumstances any question of waiver could arise when the point had throughout been under consideration and discussion and how the appellant could be precluded from pressing that point before the High Court. It has been urged on behalf of the respondent that in the interest of justice we should grant special leave against the judgment in the writ petition which was delivered in August, 1958. The delay which has been sought to be condoned is of nearly 10 years and we find no reason or justification for condoning the same. The petition for special leave is therefore, dismissed.

18) In ***Prem Kishore*** (supra) relied upon by the Respondent, the Apex Court referred to the decision in ***V. Rajeshwari*** (supra) and held that foundation for the belief must be laid in the pleadings and the issue must be framed and tried. The Apex Court held in paras-26 and 27 as under:

> 26. R.C. Lahoti, J. (as the learned Chief Justice then was), speaking for a two-Judge Bench in *V. Rajeshwari* v. *T.C. Saravanabava* [*V. Rajeshwari* v. *T.C. Saravanabava*, (2004) 1 SCC 551], discussed the plea of *res judicata* and the particulars that would be required to prove the plea. The Court held that it is necessary to refer to the copies of the pleadings, issues and the judgment of the "former suit" while adjudicating on the plea of *res judicata*: (SCC pp. 556-57, paras 11 & 13)
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> > "*11*. The rule of res judicata does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel by judgment based on the public policy that there should be a finality to litigation and no one should be vexed twice for the same cause.
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> > * * *
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> > *13. Not only the plea has to be taken, it has to be substantiated by producing the copies of the pleadings, issues and judgment in the previous case*. Maybe, in a given case only copy of judgment in previous suit is filed in proof of plea of res judicata and the judgment contains exhaustive or in requisite details the statement of pleadings and the issues which may be taken as enough proof. But as pointed out in *Syed Mohammad Salie*

> *Labbai* v. *Mohd. Hanifa* [*Syed Mohammad Salie Labbai* v. *Mohd. Hanifa*, (1976) 4 SCC 780] *the basic method to decide the question of res judicata is first to determine the case of the parties as put forward in their respective pleadings of their previous suit and then to find out as to what had been decided by the judgment which operates as res judicata.* **It is risky to speculate about the pleadings merely by a summary of recitals of the allegations made in the pleadings mentioned in the judgment**. The Constitution Bench in *Gurbux Singh* v. *Bhooralal* [***Gurbux Singh v. Bhooralal***, 1964 SCC OnLine SC 101 : (1964) 7 SCR 831 : AIR 1964 SC 1810] placing on a par the plea of res judicata and the plea of estoppel under Order 2 Rule 2 of the Code of Civil Procedure, held that **proof of the plaint in the previous suit which is set to create the bar, ought to be brought on record.** ***The plea is basically founded on the identity of the cause of action in the two suits and, therefore, it is necessary for the defence which raises the bar to establish the cause of action in the previous suit.*** **Such pleas cannot be left to be determined by mere speculation or inferring by a process of deduction what were the facts stated in the previous pleadings.** Their Lordships of the Privy Council in *Kali Krishna Tagore* v. *Secy. of State for India in Council* [*Kali Krishna Tagore* v. *Secy. of State for India in Council*, 1888 SCC OnLine PC 17 : (1887-88) 15 IA 186 : ILR (1889) 16 Cal 173] pointed out that the plea of res judicata cannot be determined without ascertaining what were the matters in issue in the previous suit and what was heard and decided. Needless to say, these can be found out only by looking into the pleadings, the issues and the judgment in the previous suit."
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> (emphasis supplied)
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> 27. This Court in *V. Rajeshwari* [*V. Rajeshwari* v. *T.C. Saravanabava*, (2004) 1 SCC 551] observed that the rule of *res judicata* does not strike at the root of the jurisdiction of the court trying the subsequent suit. It is a rule of estoppel based on the public policy of achieving finality to litigation. **The plea of *res judicata* is founded on proof of certain facts and then applying the law to the facts so found. It is, therefore, necessary that the foundation for the belief must be laid in the pleadings and then the issue must be framed and tried.**
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> *(emphasis added)*

19) In ***Prem Kishore,*** while summarizing the guiding principles while deciding application under Order VII Rule 11(d) of the Code of Civil Procedure, 1908, the Apex Court has also highlighted the need for pleadings while deciding the issue of res judicata. It is held in para-33 as under:

> **33.** On a perusal of the above authorities, the guiding principles for deciding an application under Order 7 Rule 11(*d*)CPC can be summarised as follows:
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> (*i*) To reject a plaint on the ground that the suit is barred by any law, only the averments in the plaint will have to be referred to;
> (*ii*) The defence made by the defendant in the suit must not be considered while deciding the merits of the application;
> (*iii*) To determine whether a suit is barred by *res judicata*, it is necessary that (*a*) the "previous suit" is decided, (*b*) the issues in the subsequent suit were directly and substantially in issue in the former suit; (*c*) the former suit was between the same parties or parties through whom they claim, litigating under the same title; and (*d*) that these issues were adjudicated and finally decided by a court competent to try the subsequent suit; and
> (*iv*) **Since an adjudication of the plea of *res judicata* requires consideration of the pleadings, issues and decision in the 'previous suit', such a plea will be beyond the scope of Order 7 Rule 11(*d*), where only the statements in the plaint will have to be perused.**
> (See: *Srihari Hanumandas Totala* v. *Hemant Vithal Kamat* [*Srihari Hanumandas Totala* v. *Hemant Vithal Kamat*, (2021) 9 SCC 99 : (2021) 4 SCC (Civ) 489])

20) Thus, in para-33(iv), the Apex Court held that adjudication of principle of *res judicata* requires consideration of not just the pleadings but also decision in previous Suit.

21) Failure to raise the defence of *res judicata* is sought to be surmounted by the Petitioner by contending the issue was argued before the Arbitral Tribunal and the same is decided as well. The issue of *res judicata* was not specifically framed by the Arbitral Tribunal on account of absence of pleadings. However, it appears that both the sides did argue the issue of *res judicata* before the Arbitral Tribunal which is clear from the findings recorded in para-35 which read thus:

> 35) The Second argument advanced by Opponent Bank is that the issues involved in the instant litigation were covered in suit No. 605/2005 in the Co-operative Court. As far as this contention is concern, It is misleading and cannot be accepted for simple reason that suit No. 605/2005 was in respect of Bank guarantees given by the Disputant in favour of HOCL. For

> the purpose of applying principle of Res-Judicata the issue which is involved in the matter before me must have been directly and substantially in issue before the Co-Operative Court. **It is not brought to my Notice as to how issues raised by the Disputant in the instant case were directly and substantially in issue before the Co-operative court in Case No. 605/2005. Unless and until it is proved that the grounds raised by the Disputant have been judicially considered and decided by a competent court as substantial part of the Litigation, the opponent cannot be allowed to say that the issues raised by the Disputant have been already adjudicated.**
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> *(emphasis added)*

22) Before proceeding further, it must also be observed that Petitioner did not produce the pleadings in Dispute Application Nos. 605 of 2005 and 327 of 2005 before the Arbitral Tribunal. This was done possibly because the objection of *res judicata* was not raised in the Statement of Defence. It was only orally argued based on judgments referred in the two disputes. It is a fundamental principle that plea of *res judicata* cannot be decided without examining the pleadings in the previous round of litigation. To enquire into the plea of *res judicata*, the Court has to examine the case put up by the parties in previous proceedings and then to find out what was decided by the judgment which is allowed to operate as *res judicata*. In absence of production of pleadings in Dispute Application Nos. 605 of 2005 and 327 of 2005, it was otherwise dangerous for the Arbitral Tribunal to examine the principle of *res judicata* merely on the basis of judgments referred in the two disputes. This is more so because in both the disputes, issue of coercion was not raised.

23) In both the Disputes, the issue of coercion in securing handwritten letter dated 7 April 1998 was not specifically framed. In the light of absence of issue being framed in both the disputes, it was incumbent for the Petitioner to produce pleadings in both the disputes. As rightly contended by Mr. Bansal, the oral plea of *res*

judicata argued before the learned Arbitrator could not have been otherwise effectively determined in absence of production of pleadings. In fact, in ***V. Rajeshwari*** (supra), the Apex Court has quoted the observations of its judgment in ***Gurbux Singh vs. Bhooralal***[6], in which it is held that proof of the plaint in the previous suit, which is said to create the bar, ought to be brought on record. The Apex Court in ***V. Rajeshwari*** (supra) held that plea of *res judicata* cannot be left to be determined by mere speculation or mere inferring by process of deducing the facts stated in the previous proceedings. In my view therefore, the oral plea haphazardly raised by the Petitioner before the Arbitral Tribunal was otherwise incapable of being effectively decided in absence of production of pleadings.

24) Thus, it appears that in absence of pleading, the defence of *res judicata* and in absence of framing of a specific issue and without producing the pleadings in previous litigation, the objection of *res judicata* was argued by the Petitioner and the same appears to have been decided by the Arbitral Tribunal. I accordingly proceed to examine the correctness of findings recorded by the Arbitral Tribunal on the issue of *res judicata* in para-35 of the impugned Award.

25) Petitioner presses its plea of *res judicata* on the basis of following findings recorded by the Co-operative Court while deciding Dispute No. 605 of 2005:

> **38. Disputant's contention that the bank officers have played fraud upon him and he has signed blank documents under misrepresentation and coercion by Mr. Velankar and Mr. Chalke is not at all proved by leading cogent evidence.** On the contrary above said documents produced by the opponent no.1 bank shows that the disputant is stood as a guarantor for the project finance loan facility availed by opponent no.3 for

6 AIR 1964 SC 1810

an amount of Rs. 30 Lakhs. There is nothing on record to show that the disputant has filed criminal complaint against the officers of the bank for misrepresentation and coercion for taking his signatures on the blank documents. **The disputant has not examined any other witness to prove that the officers of the bank have committed misrepresentation or coercion on the disputant.** Therefore I am of the view that opponent no.1 bank has proved that the amount of Rs. 40,83,179.21 with interest is recoverable jointly and severally from the disputant and opponent no.2, 3 and 5. Hence I have answered issue no. 6 in the affirmative. As the opponent no.2, 3 and 5 and disputant failed and neglected to make payment of the above said amount to the opponent no.1 bank and as disputant stood as a guarantor for project finance loan availed by opponent no.2 from the opponent no.1 bank, therefore he is not entitled for the direction against bank to release and handover the original documents pertaining to LIC policy of Rs. 5 Lakhs and also he is not entitled for discharge of contract of guarantee. Hence I have answered issue no. 4 and 5 in the negative and issue no. 6 in the affirmative.

(emphasis and underlining added)

26) Thus, the above findings are recorded while answering Issue Nos. 4, 5 and 6 in Dispute Application No. 605 of 2005. For the sake of reference, it would be apposite to reproduce the Issues framed and answered in Dispute no. 605 of 2005, which read thus:

Sr. No.	Issues	Findings
1.	Whether the dispute is bad for misjoinder of cause of action?	In the negative
2.	Do the disputant prove that the action of the opponent no.1 bank in making payment of Rs. 18,30,162/- to M/s Hindustan Organic Chemicals Ltd., on 11/10/1999 after the period of expiry of the bank guarantee and despite objections, is improper, invalid, illegal and contrary to law and therefore not binding on the disputant?	In the negative
3.	Do the disputant prove that he is entitled for a decree of Rs. 22,20,200/- against opponent no.1 bank with interest @ 13.5% per annum from 16/01/1999 till payment, interest being compounded every quarter?	In the negative
4.	Do the disputant prove that he is entitled for a direction against the opponent no.1 bank to release and hand over the original documents pertaining to LIC policy of Rs. 5	In the negative

	Lakhs?	
5.	Do the disputants prove that he stands discharged from the contract of guarantee?	In the negative
6.	Do the opponent no.1 prove that a sum of Rs. 40,83,172.21 is recoverable jointly and severally from the disputant and opponent no.2, 3 and 5?	In the affirmative
7.	In view of the decree passed in Special Civil Suit No. 120/1999 decided by CJSD Panvel on 29/01/2009 whether the disputant is entitled to claim the amount of Rs. 18,30,162/- towards the security depsit from the opponent no.1 bank?	In the negative
8.	What reliefs? What order?	As per final order

27) Thus, reasons recorded by the Co-operative Court while answering the Issue Nos. 4, 5 and 6 relating to release of LIC policies, discharge of guarantee and recovery of sum demanded, would not constitute *res judicata* on the issue of coercion and misrepresentation in obtaining the letter dated 7 April 1998. Careful perusal of the findings would indicate that the Co-operative Court has recorded a finding that the Respondent had failed to adduce evidence to prove the allegation of coercion. The evidence was not led as the issue was not framed. The issue was not framed as possibly there was no pleading. This is why the importance of producing pleadings in previous litigation. In my view therefore, the above quoted findings rendered while deciding Dispute Application No. 605 of 2005 would not operate as *res judicata* for deciding the issue of procurement of letter dated 7 April 1998 by coercion and misrepresentation.

28) Similarly, following findings recorded in judgment and order dated 25 October 2017 in Dispute No. 327 of 2005 are sought to be relied on:

31. **Opponent no.8's contention that the bank officers have played fraud upon him and he has signed blank documents under misrepresentation and coercion by Mr. Velankar and Mr. Chalke is not at all proved by leading cogent evidence.** On the contrary above said documents produced by the disputant bank shows that the opponent no.8 was stood as a guarantor for the project finance loan facility availed by opponent no.2 for an amount of Rs. 30 lakhs. There is nothing on record to show that the opponent no.8 has filed criminal complaint against the officers of the bank for misrepresentation and coercion for taking his signatures on the blank documents. The opponent no.8 has narrated some incident in para no. 5 of his evidence affidavit which is happened in the company of his accountant Mr. Modi. **If the officers of the bank would have committed any misrepresentation or coercion on the opponent no.8 then to prove these contentions, the opponent no.8 could examine Mr. Modi who would be the best evidence to prove the contentions of the opponent no.8.** Therefore I am of the view that disputant bank has proved that the amount of Rs. 40,83,179.21 with interest is due by the opponent no.1 to 4 and 8 jointly and severally. So far as the interest is concerned disputant bank has claimed the said amount with further interest @ 19.50 % p.a. form 01/07/2001 quarterly compoundable. But the agreed rate of interest between the parties is of 17.50 % p.a. Hence disputant is entitled for the said amount with interest @ 17.50 % p.a. Hence I have answered issue no. 2 in the affirmative.

(emphasis added)

29) The above findings are recorded while answering Issue No. 2 in Dispute Application No. 327 of 2005. The issues framed in Dispute No. 327 of 2005 were as under :

Sr. No.	Issues	Findings
1.	Does disputant prove that the amount of Rs. 1,273.00 is due against the opponents towards property loan account?	Does not arise
2.	Does disputant prove that amount of Rs. 40,83,179.21 is due against the opponents towards project finance loan account?	In the affirmative
3.	Whether disputant prove that the opponent failed to repay the amount of project finance loan account sanctioned to them on different occasions?	In the affirmative
4.	Whether the disputant bank is entitled to recover the amount as claimed by them?	In the affirmative
5.	Whether disputant are entitled to recover an amount of Rs. 1,16,38,248.53 due against project finance loan facility with interest from the opponents?	In the affirmative
6.	Whether disputant are entitled to recover	In the affirmative

	an amount of Rs. 7,98,157/- due against project finance loan facility with interest from the opponent?	
7.	What order and costs?	As per the final order

30) Again, in Dispute Application No. 327 of 2005, evidence on the issue of coercion was not led as there was no issue. Possibly there was no pleading either. Therefore, the reasons recorded by the Co-operative Court while deciding the Issue No. 2 about liability of paying claimed amount would not operate as *res judicata* on the issue of procuring the handwritten letter dated 7 April 1998 by coercion or misrepresentation.

31) As observed above, the above findings are recorded in absence of framing and answering of the specific issue of coercion in procuring letter dated 7 April 1998. The above quoted reasons are recorded for the purpose of arriving at findings for deciding issues framed by the Co-operative Court. It is well-settled position that mere furnishing of reasons in previous round of litigation for recording findings on issues framed would not operate as *res judicata*. The Apex Court in ***Nand Ram vs. Jagdish Prasad*** (supra) has held in paras-23 to 27 as under:

> **23**. The issue in the proceedings under Section 30 of the Act, before the Reference Court was restricted to the apportionment of compensation, consequent to the acquisition of the leased land. The argument was raised that the lessee had another 14 years of the lease period, therefore, the lessee claimed compensation in lieu of the unexpired lease period. The issue was restricted to the payment of compensation on account of the unexpired period of lease. The issue in question was not the title of the appellants or the eviction of the respondent. Still further, the finding of the Reference Court, as reproduced above (*see* para 6, above), is that the respondent had no right to claim a share in the compensation. **The entitlement of the appellants to claim possession from the tenant was not an issue in the previous proceedings.**

24. Before the award was announced by the Reference Court, part of the land acquired was de-notified. After denotification of the land, the respondent continued to be in possession and the title of the appellants as owners stood restored. Denotification under Section 48 of the Act is possible only when possession has not been taken and the land has not been vested in the State. The effect of denotification is that the land comprising Khasra No. 9/19 was never deemed to be acquired. Once the land was de-notified, the status of the parties as they existed prior to notification under Section 4 of the Act stood revived.

25. The High Court has relied upon the findings recorded by the Reference Court that the tenancy stood terminated so as to deny the apportionment of the compensation in respect of acquisition of land. The issue examined by the Reference Court was whether the defendant was entitled to any share of compensation awarded for the land acquired. Such issue was decided against the defendant. **It is this finding that the defendant is not entitled to any share of the compensation awarded which operates as res judicata in a subsequent suit and not the reasonings recorded by the Court for arriving at such a finding**. In a judgment in *Union of India* v. *Nanak Singh* [*Union of India* v. *Nanak Singh*, AIR 1968 SC 1370] , it has been held that what operates as res judicata is the decision and not the reasons given by the court in support of the decision.

26. In another judgment in *Mathura Prasad Bajoo Jaiswal* v. *Dossibai N.B. Jeejeebhoy* [***Mathura Prasad Bajoo Jaiswal* v. *Dossibai N.B. Jeejeebhoy***, (1970) 1 SCC 613], **a three-Judge Bench of this Court held that the previous decision on a matter in issue alone is res judicata, the reasons for such decision are not res judicata**. This Court held as under : (SCC p. 617, para 5)

> "*5*. ... A decision of a competent court on a matter in issue may be res judicata in another proceeding between the same parties : the "matter in issue" may be an issue of fact, an issue of law, or one of mixed law and fact. An issue of fact or an issue of mixed law and fact decided by a competent court is finally determined between the parties and cannot be reopened between them in another proceeding. ***The previous decision on a matter in issue alone is res judicata : the reasons for the decision are not res judicata***. A matter in issue between the parties is the right claimed by one party and denied by the other, and the claim of right from its very nature depends upon proof of facts and application of the relevant law thereto. A pure question of law unrelated to facts which give rise to a right, cannot be deemed to be a matter in issue. When it is said that a previous decision is res judicata, it is meant that the right claimed has been adjudicated upon and cannot again be placed in contest between the same parties. A previous decision of a competent court on facts which are the foundation of the right and the relevant law applicable to the determination of the transaction which is the source of the right is res judicata. A previous decision on a matter in issue is a composite decision : the decision on law cannot be dissociated from the decision on facts on which the right is founded. A decision on an issue of law will be as res judicata in a subsequent proceeding between the same parties, if the cause of action of the subsequent proceeding be the same as in the previous

> proceeding, but not when the cause of action is different, nor when the law has since the earlier decision been altered by a competent authority, nor when the decision relates to the jurisdiction of the court to try the earlier proceeding, nor when the earlier decision declares valid a transaction which is prohibited by law."
>
> **27**. Thus, the finding returned in the award of the Reference Court (Ext. PW 1/12) that the lease stood determined on account of non-payment of rent was a finding made by the Reference Court for a limited purpose i.e. not to accept the defendant's claim for compensation. Such finding cannot be binding on the parties in a suit for possession based on title or as a lessor against a lessee. Section 11 of the Code bars the subsequent court to try any suit or issue which has been directly and substantially in issue in a former suit. The issue before the Reference Court was apportionment of compensation and such issue having been decided against the defendant, the reference to notice for termination of tenancy does not operate as res judicata. Therefore, the finding recorded by the High Court that the order of the Reference Court operates as res judicata was clearly not sustainable. The first substantial question of law has been, thus, wrongly decided.
>
> ***(emphasis and underlining added)***

32) Thus, mere reasons recorded in the previous suit while deciding a different issue does not operate as *res judicata* when the issue on which reasons are recorded was not involved in previous proceedings. The issue of letter dated 7 April 1998 being procured by misrepresentation or coercion was not involved in the Disputes decided by the Co-operative Court. The Court was deciding the issue of discharge of guarantee, and the judgments would apply as *res judicata* in so far as the issue of discharge of guarantee is concerned. I am therefore in agreement with the findings recorded by the learned Arbitrator in para-35 or the Arbitral Award while rejecting the plea of *res judicata.*

33) So far as the merits of decision of the Arbitral Tribunal on the issue of coercion in obtaining letter dated 7 April 1998 are concerned, the same are findings of facts recorded after consideration of the entire evidence on record. The Arbitral Tribunal has recorded detailed reasons in para-25 to 32 of the Arbitral

Award. For the sake of brevity, the detailed findings are not reproduced here. The findings are well-supported by the evidence on record and cannot be termed as perverse by any stretch of imagination.

34) Even otherwise, if one peruses the letter dated 7 April 1998, it appears that the same otherwise did not constitute conscious intention on the part of the Respondent to create security in respect of the fixed deposit receipts or LIC policies. The letter dated 7 April 1998 reads thus:

> To
> The Chairman
> The Thane Janta Sahakari Ltd.
> Thane.
>
> Madam,
>
> Your vartaknagar Branch has hold my securities of my flats, L.I.C. policy and fixed deposit for my guarantor ship to M/s. A.S. Construction.
>
> We hereby request you to release my property and LIC policies, which we required urgently and continue renew our FDR till our liability for A.S. Construction.
>
> Thanking you,
> Yours faithfully,
> M/s. Narendra Construction Co.
> Sd/-
> Partner

35) The Arbitral Tribunal has taken into consideration the attendant circumstances in which the said letter was procured. It thereafter recorded a finding of fact that the letter is procured by coercion and misrepresentation. I find no reason to interfere in the said findings in exercise of power under Section 34 of the Arbitration Act.

36) It is sought to be contended by the Petitioner that one of the reasons for the Arbitral Tribunal to record the finding of coercion and misrepresentation in respect of letter dated 7 April 1998 is alleged failure on the part of the Petitioner to deny the allegation of coercion after receipt of letters dated 22 April 1998 and 23 April 1998. The relevant findings recorded by the Arbitral Tribunal in para-39 of the Award are as under :

> 39) One more ground is raised and that is A Award in favour of the Disputant should not be passed because it will lay down a wrong precedent and the guarantors will start dragging the banks in Arbitration. This is absolutely unsustainable argument. From the discussion in the instant Award it is crystal clear that the Disputant was forced to sign a letter dated 07/04/1998 and he was also forced to sign blank forms and documents on 21st April 1998. The best Opportunity to the opponent Bank to deny these allegations were available when the bank had received notices dated 22/04/1998 and 23/04/1998 issued by Advocate Bhambalani issued on behalf of the present Disputant. It is admitted by the witnesses that Exhibit 14 and 15 bears endorsement of their superior officer wherein the office was directed to approach an Advocate for sending a reply. Surprisingly the Opponent has denied receiving such letters from Advocate Bhambalani on Exhibit 15. Admittedly the Opponent bank was not able to produce any document on record to establish the allegations of the Disputant were refuted at the earliest possible opportunity. This circumstance also goes to show that the defence is after thought. In any event in my considered opinion the Disputant deserves an award in the instant case.

37) It is contended by the Petitioner that Respondent did not prove service of letters dated 22 April 1998 and 23 April 1998. However, it is seen that specific pleadings with regard to the said two letters were raised by the Respondent in the Statement of Claim, which read thus:

> Advocate Bhambhlani made out a letter per the instructions of the applicant and specifically demanded the return of the documents signed under coercion and in blank and faxed the letter to the opponent. Advocate Bhambhlani' s letter dated 22nd April 1998 is placed at Sr. No. 10 of the list of documents accompanying this dispute. Advocate Bhambhlani under applicant's instructions made out another letter dated 23rd April 1998. The said letter also demanded the return of the documents in print form and type written signed in blank under misrepresentation and coercion by the applicant. The said letter is placed

> at Sr. No. 11 of the list of documents accompanying this dispute. The said letter bears an endorsement of higher officers to Mr. Chalke Manager to contact Advocate V M Kulkarni and arrange for reply immediately.

38) Despite above specific pleadings, Petitioner failed to raise the plea of non-receipt of the two letters dated 22 April 1998 and 23 April 1998 in the Statement of Defence. More importantly, one of the letters bears clear noting of official of the Petitioner-Bank dated **27 April 1998** thereby belying the plea of non-receipt of the said letter.

39) In my view therefore, no interference is warranted in the findings recorded by the Arbitral Tribunal that handwritten letter dated 7 April 1998 was procured by Petitioner-Bank by coercion and misrepresentation.

40) So far as interest awarded by the Arbitral Tribunal is concerned, it is seen that the Tribunal has awarded *pendent lite* interest @ 17.50% p.a. though the Claimant had claimed interest @ 13.5 %. The reasons for doing so are reflected in para-41 of the impugned Award, which reads thus:

> 41) The question that is now arising for my consideration is that, at what rate the Opponent Bank should be directed to make repayment of interest on the amount due to the Disputant. For that purpose it is safe to place reliance on the Cross Examination off Mr. Velankar wherein he has admitted that interest @ 19.50% was charged. There is no dispute that the opponent Bank has claimed interest @19.50% with quarterly rests in Dispute No. CCT/327/2005 and the Appellate Court has been pleased to grant interest @17.50% p.a. Even if the claimant has claimed interest @13.50% I will be within my Jurisdiction to grant interest @17.50% to the Disputant, because justice demands that the same rate of interest should be applied to the dues payable to the Disputant, which was claimed and received by the Opponent Bank. In the light of the above observations I proceed to pass the following award.

41) Thus, despite noting that the interest claimed by the claimant was only 13.5%, the Arbitral Tribunal has still proceeded to award higher rate of interest @ 17.50% p.a. by holding that '*because justice demands that the same rate of interest should apply to all dues payable to the disputant*'. Award of interest higher than the one claimed by the party clearly constitutes patent illegality in the Award. The Arbitral Award also breached the fundamental policy of Indian law by awarding relief not prayed for by the claimant. In my view therefore, award of interest @ 17.5% p.a. by the learned Arbitrator is clearly erroneous, rendering that part of the Award invalid.

42) This Court has thus upheld most of the Award and only the rate of interest awarded by the Arbitral Tribunal is found to be erroneous. In my view however, the entire award need not be set aside on account of error committed by the Arbitral Tribunal in awarding higher rate of interest. The Constitution Bench in ***Gayatri Balasamy vs. ISG Novasoft Technologies Limited***[7] has held that the court exercising power under Section 34 of the Arbitration Act can modify the award even by altering the rate of interest. The Apex Court has held thus:

> 73. The next question that arises is: do courts possess the power to declare or modify interest, especially post award interest? In respect of pendente lite interest, Section 31(7)(a) (Annexure A), states that unless otherwise agreed by the parties, the arbitral tribunal may include in its sum for the award, interest, at such rate it deems reasonable on whole or part of the money for whole or part of the period on which the cause of action arose and the date on which the award is made. In respect of post-award interest, Section 31(7)(b) (Annexure A) states that unless an award provides for interest on a sum directed to be paid by it, the sum will carry an interest at a 2% higher rate than the current rate of interest prevalent on the date of the award, from the date of the award till

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the date of payment. The explanation defines the expression 'current rate of interest'.

74. There can be instances of violation of Section 31(7)(a), and the pendente lite interest awarded may be contrary to the contractual provision. We are of the opinion that, in such cases, the court while examining objections under Section 34 of the 1996 Act will have two options. First is to set aside the rate of interest or second, recourse may be had to the powers of remand under Section 34(4).

xxx

87. **Accordingly, the questions of law referred to by Gayatri Balasamy (supra) are answered by stating that the Court has a limited power under Sections 34 and 37 of the 1996 Act to modify the arbitral award.** This limited power may be exercised under the following circumstances:

87.1 **when the award is severable, by severing the "invalid" portion from the "valid" portion of the award, as held in Part II of our Analysis.**

87.2 by correcting any clerical, computational or typographical errors which appear erroneous on the face of the record, as held in Part IV and V of our Analysis

87.3 post award interest may be modified in some circumstances as held in Part IX of our Analysis; and/or

87.4 Article 142 of the Constitution applies, albeit, the power must be exercised with great care and caution and within the limits of the constitutional power as outlined in Part XII of our Analysis.

(emphasis added)

43) In my view therefore, bad part of the Award, in so far as rate of interest is concerned, can be severed from the good part of the Award. The bad part of the Award is not inseparably intertwined with the good part and that therefore, it is easily possible to severe the bad part of the Award.

44) I accordingly proceed to pass the following order :

(i) Award dated 2 May 2024 is confirmed to the extent of Respondent's entitlement to recover amounts of Rs.4,05,558/- and Rs.14,07,409/-.

(ii) However, the rate of interest of 17.5% p.a. awarded by the Arbitral Tribunal is set aside and is substituted by the rate of 13.5% p.a. payable at quarterly rests.

(iii) Rest of the Award is confirmed.

45) Arbitration Petition is **partly allowed** to the above extent. However, I deem it appropriate not to award any further costs in the present Petition. With dismissal of the Petition nothing would survive in the Interim Application and the same is disposed of.

[SANDEEP V. MARNE, J.]

NEETA SHAILESH SAWANT

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