

(2005) 08 GAU CK 0084
In the Gauhati High Court
Case No : First Appeal No. 228 of 1997

Basant cables and conductors Pvt. Ltd. and Others	APPELLANT
Vs	
UCO Bank and Others	RESPONDENT

Date of Decision : 01-08-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80, 80(2)
Companies Act, 1956 — Section 292(1)
Constitution of India, 1950 — Article 12

Citation : (2005) 3 GLT 621

Hon'ble Judges : I.A. Ansari, J;A.B. Pal, J

Bench : Division Bench

Advocate : B.R. Dey, S. Datta and Dipa Sengupta, for the Appellant; K.H. Choudhury, D. Guha, S. Lodh and P. Chakraborty, for the Respondent

Final Decision : Allowed

Judgement

A.B. Pal, J.—The judgment and decree dated 17.7.97 and 24.7.97 respectively passed by the learned Civil Judge, Sr. Division, West Tripura, Agartala in Money suit No. 47 of 1994 whereby Rs. 25,52,424/- against a claim of Rs. 36,66,953/- with interest @ Rs. 10% per annum with cost of the suit has been decreed against the Appellant-Bank stands impugned in the present appeal.

2. The money suit was filed by M/s Basant Cables and Conductors Pvt. Ltd. (hereinafter mentioned Company) and its three Directors, the Respondents herein, against the U.C.O. Bank (for short, Bank) and Sri Ranjit Roy Choudhury who was at the relevant period its Chief Manager of Agartala Branch, the Appellants herein. The Director of Industries Government of Tripura was arrayed as a proforma-Defendant though no relief was sought against the State of Tripura on the Director of Industries. The Plaintiff Company, the first Respondent herein, was registered under the Indian Companies Act, 1956 with a view to set up an industry in the State of Tripura for manufacturing aluminium conductors as a Small Scale Industry (SSI) Unit known as Basant Engineering having been

registered as SSI Unit with the approval of the fifth Respondent herein (Director of Industries). It engaged itself in manufacturing and marketing aluminium conductors of various descriptions which are used in transmission of electricity. In order to meet its requirement for working capital it approached the Appellant-Bank for financial assistance in the form of Cash Credit Facilities (for short, "CCF") and Inland letter of Credit (for short, "ILOC). In due course, the Bank sanctioned both the CCF and ILOC facilities to the extent of Rs. 4.30 lakhs and Rs. 4 lakhs respectively on 6.10.88 subject to terms and conditions contained therein. The Plaintiff Respondent accepted the terms and conditions and started to avail of the said facilities. On 21.3.90, the limit of the facilities was extended to Rs. 10 lakhs each for both the CCF and the ILOC. The sanction letter issued by the Bank (Ext.1), inter alia, provides in Clause (2) that it would remain valid for one year subject to renewal after review. Clause (8) thereof further provides that the credit facilities has been given at the sole discretion and option of the Bank. It maybe withdrawn/amended at any time by the Bank without prior information to the borrower. The Plaintiffs claimed, inter alia, that its business of manufacturing conductors as SSI unit was in a very prosperous position, earning profit, generating employment and resources and thereby serving the interest of the State. The relation between the company and the Bank was in great harmony till March, 90 when it ran into rough weather. The Bank debited an amount of Rs. 40,287.80 in the account of the Company on account of payment by the Bank of a premium to Deposit Insurance and Credit Guarantee Corporation of India (for short, "DICGCI") payable by the Company inviting protest on 20.7.90 and request for setting at right the account on 25.2.92 from the Company itself. The contention of the Respondent-Company on this point is that this premium is to be paid by the Bank itself, not by the Company and for that reason higher rate of interest upto 21% is charged by the Bank on the borrower. On 4.1.91, the Bank intimated the Company that a bill for an amount of Rs. 9.79.631 /- had been received from N.A.L.CO., Bhubaneshwar, for payment and on that amount the Bank charged an amount of Rs. 20,749/- as interest. Thus, the Bank asked the plaintiff to deposit in the ILOC account an amount of Rs. 10,00,380/- being the bill amount and the interest thereon. The relation suffered a second joint when the second Appellant herein joined as Chief Manager of the Bank in the Agartala Branch. He intimated the Company that on the above amount paid to NALCO, an additional interest @ Rs. 31% per annum for the overdue period from 4.1.92 to 27.2.92 was to be paid by the Respondent-Company according to whom this is impermissible. The grievance of the Respondents is that the Bank did never ask or advise them to deposit marginal excess over the sanctioned limit in order to enable them to avoid exorbitant rate of interest such as this. The facilities were, however, renewed from year to year and on 25.2.92, the Respondent-Company requested the Bank to renew the same again for Anr. year enclosing with the request letter the audited balance sheet for the year 1990-91. The second Appellant, however, asked the Company to submit audited account for the year 1991-92 for consideration of renewal of the facilities and till submission of such account, the ILOC was extended for three months more. The grievance of the

Plaintiffs is that due to certain defects in the ILOC for which the Chief Manager was responsible the Plaintiffs could not utilize the facility for a period of about one month i.e. from 17.4.92 to 11.5.92 causing thereby substantial financial loss. After the expiry of three months, the ILOC, was, however not renewed and on the contrary, the Chief Manager asked the Plaintiff- Respondent to submit estimated account for 1993 and projected account for 1994 of the Company. On 19.11.92, the Bank intimated the Respondent-Company that it had withdrawn the ILOC and the CCF facility for main two reasons, firstly, the Respondent-Company created insecurity by diversion of its fund to its other subsidiaries and secondly, the share capital of the Company was not fully subscribed. The Bank, however, offered alternative proposal to the Company to apply afresh for the above facilities. Withdrawal of these facilities came to be a sudden blow to the commercial activity of the Company who on 27.11.92 wrote a letter to the Bank to justify the renewal of the facilities and dispel Bank's contentions. On 28.11.92 the Plaintiff approached the Zonal Manager and had a talk with him over telephone on 21.12.92. But the Zonal Manager supported the steps taken by the second Appellant withdrawing the facilities. The grievance of the Respondent-company is that such unilateral withdrawal of the facilities had disastrous consequence as the Company could not run without such facilities. The second Appellant who was the Chief Manager of the Bank at the relevant time has been blamed by the Respondent-Company as responsible for withdrawing the facilities out of malice. According to the Company at the time of withdrawing the facilities on 19.11.92, they had in their credit balance an amount of Rs. 189, 961.93 which is enough to establish that the withdrawal of the CCF and ILOC facilities was actuated from malice and ill will on the part of the second Appellant against the Company. The second Respondent herein who is the Director of the Company is alleged to have been misbehaved, harassed and humiliated by the second Appellant when he met him. The Respondent-Company alleged that as a result of sudden withdrawal of the above facilities the Company and its Directors suffered severe damages which cannot be easily ascertained in money terms only. They contended that a Bank in the public sector, like the present one, and its Chief Manager being a public officer cannot act arbitrarily, whimsically, irrationally and out of malice to cause damage to an industry which contributes to the economic growth of the State. Though the word "discretion" is present in Clause (8) of the sanction letter (Ext.1) issued by the Bank such discretion cannot be unfettered or a license for a public officer to act arbitrarily and unfairly. Being aggrieved by the action of the Chief Manager, the Respondent-Company claimed Rs. 11 lakhs as special damages and Rs. 25,66,953/- as general damages, the total amount of damages being Rs. 36,66,953/-. According to the Respondent-Company the cause of action has arisen on 31.3.90 when Rs. 40,287/- was debited in the account of the Company and on 19.11.92 when the CCF and ILOC facilities were withdrawn by the Bank unilaterally.

3. The Bank and its Chief Manager contested the suit raising, inter alia, several preliminary issues, the first being the limitation in filing the suit in 1994 when

the first cause of action had arisen on 31.3.90. Having filed after a period of three years the suit is barred by limitation. The second issue is a technical one whether such suit could be filed without issuing notice u/s 80 Code of Civil Procedure, particularly when the Bank is a statutory organization within the meaning of Article 12 of the Constitution and the Director of Industries being a public officer. Maintainability of the suit filed by the Basant Cables and Conductors Pvt. Limited (for short, "Basant Cables") when financial assistance was in favour of "Basant Engineering" has been Anr. technical issue. Apart from the technical preliminary issues, the main contention of the Bank is that the CCF and ILOG facilities were sanctioned only for one year to be renewed every year after review, As the Bank as well as the Company are two commercial Units they are required to take into consideration their respective interests in entering into and continuing any relationship. As regards the reasons for withdrawing the facilities on 19.11.92, the contention of the Bank is that it observed from the provisional balance sheet and profit and loss account as on 31.3.92 that there was an amount of Rs. 10,03,121.63 under the head "head Office A/C" in the liability side. On 25.6.92, the Bank wanted the Company to furnish the break-ups and sought certain clarifications. On 4.7.92 the company furnished the breakups which showed that some entries were not legible, there were no signatures in case of sundry debtors and creditors, unsecured loan was obtained to the tune of Rs. 3,29,900/- from its Directors which was interest bearing @ Rs. 24% per annum and Rs. 2,55,105/- was paid against the said unsecured loan. It was also noticed by the Bank that the Company diverted its fund to its other subsidiaries without any intimation to the Bank. On 25.9.92, the Company had drawn cheques in favour of the Superintendent of Sales Tax towards quarterly payment of tax, but the same was not deposited in its account by the Company. Though the Company had no adequate fund in its account at that time, the Bank, in order to make a good relation cleared the tax liability and debited the amount of tax to the Company's CCF account. In order to avoid any such default in further, the Bank advised the Company to credit the sale proceeds into the CCF account only. The Bank informed the Respondent-Company that in the absence of audited balance sheet and profit and loss account for the financial year ending 1991-92 it was unable to renew LLOC and CCF. Again, the Bank requested the Company to submit proposal for suitable realignment of the existing limit of the facilities and request for fresh sanction. It is contended by the Bank that every commercial Unit must prepare its estimated account for the current year and projected account for the next year without which a Commercial Bank cannot assess the Company's need based requirements which are in accordance with the norms and guidelines issued by the Reserve Bank of India. There was, therefore, nothing wrong on the part of the Chief Manager to ask the Company to furnish the estimated and projected account for 1993 and 1994 respectively. As regards the question of issuing No-objection certificate by the Bank in favour of the Company it is contended that the Bank was never asked for such certificate and that issuing of No-objection certificate depends on scouring up of the liability of the Bank. It is further contended by the Bank that the Chief Manager had no

reason to act out of malice and whatever he had done was for the interest of the Bank and, therefore, there was no arbitrariness or unfairness on his part in withdrawing the facilities which had approval of the Bank.

4. The learned trial court framed 12 issues most of which are formal and have been decided on the basis of the pleadings only. As the entire thrust in the claim of the Company is placed on the Chief Manager of the Bank, the second Appellant herein, blaming him for illegally and arbitrarily withdrawing the CCF and ILOC facilities out of malice against the Company, the trial court framed following three issues to cover this particular aspect, namely:

(D) Whether the Defendant Nos. 1 and 2 acted whimsically and arbitrarily to the detriment of the Plaintiffs' interest?;

(E) Whether the Defendant No. 2 Sri Ranjit Roy Chowdhury acted illegally and maliciously against the Plaintiffs? and

(J) Whether the Defendant No. 2 and officers of the Bank acted in the interest of the Bank?

5. The trial court decided all the issues against the Bank and in favour of the Company and after holding the Chief Manager and Zonal Manager personally responsible for the withdrawal of the facilities and damage caused thereby to the company decreed an amount of Rs. 4,00,000/- for mental agony, Rs. 3,00,000/- for loss of goodwill, Rs. 16,50,000/- being 10% of the work order which the Company received but could not execute, Rs. 1,37,471/- for 1992-93 on idle labourers and overhead charges, Rs. 47,287/- on account of illegal debit in Plaintiffs' account to pay premium to the DICGCI, Rs. 16,666/- being the interest on the debit amount and in total Rs. 25, 51, 424/-. In addition, the trial court also decreed 10% interest on the said amount along with the cost of the suit., Concluding direction of the trial court to the Bank is to recover entire decretal amount with interest from the officers who are responsible for arbitrarily, whimsically and illegally withdrawing the CCF and ILOC facilities causing thereby huge damage to the Company. The Chief Manager of the Branch and the Zonal Manager of the Bank have been specifically named as responsible for the same.

6. We have heard Mr. B.R. Dey, learned Sr. advocate assisted by Mr. S. Dutta, and Mrs. Dipa Sengupta, learned advocates for the Appellant Bank and Mr. M.H. Chowdhury, learned Sr. Advocate assisted by Mr. D. Guha, Mr. S. Lodh, Mr. P. Chakraborty, learned advocates for the Respondent-Company.

7. From the rival submissions advanced by the learned Counsels for the contending parties in support of their respective pleadings as compendiously set out above, we may notice that the controversies have been urn-rowed down to the central issue whether the Chief Manager of for that matter the Zonal Manager of the Bank had withdrawn the CCF and ILOC facilities out of malice against the Company or whether they acted in bona fide discharge of their official

duties. It is to be made clear at the very outset that if they are found to have acted in bona fide discharge of their official duties, the decision in withdrawing the above facilities, even if found to be wrong, cannot be a reason to fasten the Bank or its officers with any liability. However, before adverting to this central issue we feel it convenient to address ourselves to the technical and other peripheral issues first. Mr. B.R. Dey, learned Sr. counsel for the Appellants strenuously argued that the cause of action as stated in the pleadings of the Company had arisen in 1990 but the suit was filed in 1994 after a period of three years, obviously thus rendering the suit time bailed. In support of his contention, he has cited the decisions of the Supreme Court in *I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and Others*, in *Saleem Bhai and Others Vs. State of Maharashtra and Others*, In *Beg Raj Singh Vs. State of U.P. and Others*, . We have, however, noticed that the last cause of action has been stated to have arisen on 19.11.92 when the GCF and ILOC facilities enjoyed by the Company were withdrawn by the Bank and counting the limitation period from this date the suit can be said to be well within time. The above decisions on limitation cited by Mr. Dey, therefore, need no discussions. Next submission advanced by Mr. Dey is that the suit was bad for not issuing notice u/s 80 CPC which is a mandatory provision for filing any suit against any public officer or State. According to him, the Bank is a State within the meaning of Section 80 CPC and the Director of Industries a public officer calling for compliance with their legal requirements. No permission was also obtained u/s 80(2) CPC for filing such suit without notice and for this reason alone the suit of the Plaintiff should have been dismissed at the very threshold. We have noticed that no relief has been sought against the Director of Industries or the State Government and there was a prayer at one stage to delete the Director of Industries as Defendant which, however, has not found a formal order for deletion. As regards the requirements of notice u/s 80 CPC against the Bank, we are of the view that the Bank maybe "State" as defined in Article 12 of the Constitution but only for the purpose of Chapter 3 relating to fundamental rights of the Constitution. Notice u/s 80 is necessary for instituting a suit against the Government" which is the word specifically mentioned in that section. While Article 12 defines "State" Section 80 applies to "Government" or "public officer". "State" and "Government" cannot be given one and same restricted meaning, their connotation and sweep being totally different. No such notice, in our view, is necessary for instituting a suit against the Bank which may be a State but not a "Government". The decisions on this issue relied on by Mr. Dey needs, therefore, no recital. The other issues canvassed before us by Mr. Dey is that the suit has been filed by M/s Basant Cables and Conductors (Pvt. Ltd.) while the CCF and ILOC facilities were sanctioned in favour of M/S Basant Engineering. All the correspondences in relation to the transaction as placed on records are between the bank and M/S Basant Engineering and this being the position, according to Mr. Dey, the suit having not been filed by M/S Basant Engineering is not maintainable. We have carefully gone through the materials on record and have noticed in Ext.1 which is a letter by the Bank to M/s Basant Engineering that M/s Basant Cables and

Conductors Pvt. Ltd. has been shown as the proprietor of M/s Basant Engineering. Thus, having admitted that M/s Cables and Conductors Pvt. Ltd. is the proprietor of Basant Engineering by the Bank itself it does not lie in its mouth to raise this unnecessary question that the suit is not maintainable because it has not been filed by M/s Basant Engineering. As the proprietor has filed the suit, such a question is irrelevant and misplaced. We have also noticed that this issue did not figure in the proceedings earlier in any shape or form.

8. Mr. Dey raising Anr. technical issue submitted that no resolution of the Board of Directors of the M/s Basant Engineering to borrow money as required u/s 292(1)(c) of the Companies Act was placed at the time the suit was filed. We fail to understand how this issue has become relevant for addressing the question whether the Bank had withdrawn the CCF and ILOC facilities of the Company illegally, arbitrarily, whimsically and out of malice. It is not in dispute that the Bank had sanctioned the above facilities after having been satisfied about the prayer of the Company in all respects and, therefore, such an issue is in our view *dehors* the context.

9. Coming to the central issue of controversy as to whether the Chief Manager or the Zonal Manager of the Bank had acted illegally, arbitrarily and with malice against the Company, we may first note the relevant part of the impugned judgment wherein the responsibility of the Bank suffering the decree has been squarely fastened to these two officers, the Chief Manager and the Zonal Manager:

Before parting with the case records I must not forget to mention here that the Defendant No. 1 is the public sector financial organization and it has to incur the loss of Rs. 25,51,424/- only along with its interest @ 10% p.a. till the date of the payment of the same to the Plaintiffs unnecessarily for the laches of its officers who were solely responsible for it. The Defendant No. 1 should not suffer the loss for the illegal, arbitrary and whimsical act of the then Chief Manager, Sn Ranjit Roy Chowdhury and the Zonal Manager of U.C.O. Bank, Guwahati.

The UCO Bank should fix the personal liabilities of the officers for whom it has to incur such a heavy amount of loss. The customers of its beneficiaries should not suffer any loss for the laches of the officers of the Bank who whimsically and arbitrarily acted against the interest of the Plaintiffs as well as the Bank.

So, the UCO Bank authority shall realize the entire decretal amount along with its interest from its officers who were responsible for the loss of the Bank.

The trial court made these directions after accepting the allegation of the Company against the two officers that they had acted with malice against the Company. The settled law on the question of malice or *mala fide* need to be kept in mind before appreciating the evidence on record on this particular serious issue. It has to be borne-in-mind that the Zonal officer and the Chief Manager are holding high offices in the Bank which is a public sector undertaking and has been breathing health in the economy of the country and it is the goal of every

such Bank to promote industrial and commercial activity by extending financial facilities to the entrepreneurs and other business organizations. It is also to be appreciated that they have to exercise their powers and functions within certain discipline and are expected to enter into transaction in varied situation after applying their prudence and wisdom. In *Chairman and Managing Director, United Commercial Bank and Others Vs. P.C. Kakkar*, the Apex Court observed in para 14, relevant part of which is quoted below:

A bank officer is required to exercise higher standards of honesty and integrity. Every officer/employee of the bank is required to take all possible steps to protect the interests of the bank and to discharge his duties with utmost integrity, honesty, devotion and diligence and to do nothing which is unbecoming of a bank officer. Good conduct and discipline are inseparable from the functioning of every officer/employee of the bank.

The allegation of mala fide or malice against such highly placed officers need to be substantiated with proof of a high order as otherwise it will be difficult on the part of such high functionaries to act freely in accordance with their best judgments. In *E.P. Royappa Vs. State of Tamil Nadu and Another*, the Apex Court in para 92 observed:

92. Secondly, we must not also overlook that the burden of establishing mala fides is very heavy on the person who alleges it. The allegations of mala fides are often more easily made than proved, and the very seriousness of such allegations demands proof of a high order of credibility.... In this context it maybe noted that top administrators are often required to do acts which affect Ors. adversely but which are necessary in the execution of their duties. These acts may lend themselves to misconstruction and suspicion as to the bona fides of their author when the full facts and surrounding circumstances are not known. The Court would, there fore, be slow to draw dubious inferences from incomplete facts placed before it by a party, particularly when the imputations are grave and they are made against the holder of an office which has a high responsibility in the administration. Such is the judicial perspective in evaluating charges of unworthy conduct against ministers and other high authorities, not because of any special status which they are supposed to enjoy, nor because they are highly placed in social life or administrative set up these considerations are wholly irrelevant in judicial approach but because otherwise, functioning effectively would become difficult in a democracy. It is from this stand-point that we must assess the merits of the allegations of mala fides made by the Petitioner against the second Respondent.

Again, in *State of Punjab v. V.K. Khanna* reported in AIR 2001 SC 343, the Apex Court has given more focus on the expression mala fide. The observation in para 25 reads thus:

25.... The expression "mala fide" has a definite significance in the legal phraseology and the same cannot possibly emanate out of fanciful imagination or

even apprehensions but there must be existing definite evidence of bias and actions which cannot be attributed to be otherwise bona fide-actions not otherwise bona fide, however, by themselves would not amount to be mala fide unless the same is in accompaniment with some other factors which would depict a bad motive or intent on the part of the doer of the act.

10. On the anvils of the above principles, we may now proceed to place the fact situation of the case in hand as have emerged from the materials on record, particularly on the correspondences made by the second Appellant herein on which the company has placed much reliance. The Plaintiff-Company pleaded that it had excellent relation with the Bank till March, '90 when an amount of Rs. 40,287.80 was debited in its account for payment of premium to the DICGCI. This is the first occasion of the fissure in the excellent relation between the Plaintiff-Company and the Bank. According to the Company, the Bank was liable to pay the same while according to the Bank it was the liability of the Company. It may be noted here that in March, '90, the second Appellant herein was not the Chief Manager who has been framed by the Company as the only pointman responsible for the deterioration of the relationship. The second Appellant joined as Chief Manager only in January, '92 and there is nothing in the pleadings that he came to the Bank with a pre-conceived hostile notion against the Company in order to justify the allegation of malice. The second occasion of straining the relation is the additional interest @ Rs. 31% for the period from 4.1.92 to 27.2.92 which the Bank imposed on the Company for payment of Rs. 9,79,631- against a NAL Co. Bill. The Bank charged normal interest of Rs. 20,749/- for which the Company had no grievance. On the issue of additional interest the grievance of the Company is that the Chief Manager did never intimate them that they should deposit marginal excess over sanctioned limit in order to avoid high rate of additional interest. It is again to be noted here that the second Appellant joined only in January, '92. As per the statement of the Company and the period of additional interest was from 4.1.92 to 27.2.92. It is very difficult to presume the development of malice in the mind of the second Appellant against the company within a very short spell in the absence of specific particulars which the Company was required to furnish. The trial court observed at page 14 of the judgment that the Defendant No. 2 (second Appellant herein) acted whimsically and maliciously ignoring his obligations towards the Plaintiffs" (Respondent Company) in spite of the fact that they were having healthy and well operated accounts. These were practically the allegations of the Plaintiff-company without any particulars to justify the allegation of malice. At the very inception of the discussion on the issues of (D), (E) and (F) in para-9 of the impugned judgment, the trial court held thus:

It appears from the case record that the Defendant Nos. 1 and 2 acted whimsically and arbitrarily to the detriment of the Plaintiffs" interest.

11. The only grievance of the Company with regard to the additional interest is that had they been intimated or advised to deposit marginal excess over the

sanctioned limit they could have avoided the additional interest admitting thereby that the additional interest was charged as per Banking rules and regulations which could be avoided on deposit of marginal excess. It is expected that a Company like the present one which is dealing with its commercial activities with financial assistance from the Bank must be aware of the relevant provisions in the Banking rules and regulations about the additional interest as well as the deposit of marginal excess. Nowhere there is any whisper in the pleadings of the Company that the Chief Manager was legally liable to advise the clients about additional interest and the benefit of the deposit of marginal excess. No argument has been advanced how by not tendering any intimation or advice to the Company about deposit of marginal excess, the Chief Manager can be held to be guilty of malice.

12. In order to prove the malice or hostility, the Company has alleged that its Director, the second Respondent herein met the second Appellant after the additional interest was slapped on the Company in order to retrieve the situation. The allegation is that the Director was misbehaved, harassed and humiliated by the Chief Manager. But the trial court held that the Plaintiff-Company failed to prove defamatory behaviour by the Chief Manager towards the Plaintiff No. 2 (second Respondent) and accordingly the claim of Rs. 10,00000/- on that account has been ignored. In para 14 of the plaint, the Company pleaded that the letters dated 14.7.92, 6.8.92 and 30.10.92 issued by the Chief Manager are clear evidence of malice on the part of the second Appellant. These letters have been marked as Ext. 16, Ext. 18 and Ext. 22. We have carefully perused these letters in order to satisfy ourselves whether the allegation of malice finds support from them. In Ext. 16, the Chief Manager first pointed out that the break up of Rs. 10.03.121/63 under the "Head Office A/C" furnished by the Company are mostly illegible. Then he writes as follows:

As regards your list of advances, sundry creditors and sundry debtors, it has not been signed by your authorized signatory. In the absence of such signature we cannot accept it as authentic.

Regarding non-existence of any disputed liability as on 31.3.92, we would request you to furnish to us a certificate from your auditors.

You have not adequately answered our question as to why the directors have chosen to give an unsecured loan to the company to the tune of Rs. 3,29,000/- instead of fully subscribing the authorized share capital of Rs. 10 lakhs. We feel that unsecured loan as about should be converted into equity.

Ext. 18 is the letter dated 6.8.92 from the Chief Manager to M/s Basant Engineering observing first that despite repeated request the Company did not furnish a certificate to the effect that M/S Basant Cables and Conductors Pvt. Ltd. (the Appellant Company) do not have any other business other than M/s Basant Engineering . The second observation is that during 1991-92 an advance of Rs. 81,852.81 has been made to M/s Basant Chemicals and Anr. advance of Rs.

2,18,323/- to M/s General Engineering Works. The Bank wanted to know why such an amount has been diverted by Basant Engineering and why Anr. advance of Rs. 1,46,466.31 has been diverted to M/s Basant Cables and Conductors Pvt. Ltd. Thereafter, the Bank expressed its disapproval to unsecured loan of Rs. 3,29,900/- obtained by the Company from its Directors and re-payment of Rs. 2,55,105/- towards payment of such loan. The Bank insisted that the Director should subscribe to the share capital instead of providing unsecured loan. Finally, the Company has been requested to furnish audited balance sheet and Profit and Loss Account for the year ended on 31.3.92 as 4 months already lapsed after the date of closer of the accounts. The third letter dated 30.10.92 is in Ext. 22 where an important observation has been made by the Bank about the affairs of M/s Basant Engineering. The balance sheet and Profit and Loss Account of M/s Basant Engineering remained unaudited. It has been observed by the Bank again that the renewal-cum-enhancement request should be supported by an estimated balance sheet and Profit and Loss Account of the Company for the year ending on 31.3.93 and also a projected balance sheet and Profit and Loss Account for the period ending on 31.3.94. Diversion of fund to M/s Basant Chemicals and unsecured loan advanced by its Directors at an interest of 24% per annum with effect from 1.4.91 had been disapproved by the Bank once again. The Bank also wanted the Company to furnish particulars of M/s Basant Chemicals which it claimed to be a sister concern. Finally, the Bank requested the Company to furnish adequate co-lateral security by way of equitable mortgage of property for renewal/enhancement of the limits. Though these 3 letters have been cited by the Company as clear evidence of illegal and malice on the part of the second Appellant, learned Counsel for the Respondent-Company failed to advance any submission as to how those letters smacks malice and why the points raised therein can be said to be unreasonable and unnecessary. In the pleadings of the Respondent-Company there is nothing to deny the shortcomings such a diversion of fund, unsecured loan advanced by the Directors at a high rate of 24% interest instead of subscribing to the share capital and unaudited balance sheet and Profit and Loss Account of Basant Engineering and in the absence of any such denial we are not convinced as to how the shortcomings pointed out by the Bank can be said to be out of any malice on the part of the second Appellant herein. For renewing the CCF and ILOC the Bank demanded collateral security in view of the positions explained in Ext. 22 and the learned Counsel for the Respondent-Company failed to canvass before us how such a demand can be said to be unreasonable, unjustified, arbitrary and out of malice and why in view of the shortcomings pointed out by the Bank such as collateral security should not be held to be most reasonable one in order to safeguard the interest of the Bank.

13. As regards premium paid to DICGCI, learned trial court held that the Appellant-Bank can deduct such premium from the accounts of the Plaintiffs but only after giving them notice in this regard. But the relevant document from the subject "Recovery of DICGCI guarantee fee from borrowers" dated 14.9.91 (Ext.A) contains no provision that for realizing from the borrowers by the Bank

any such notice is at all necessary. We fail to understand when the trial court held that the Bank is entitled to deduct the premium for the DICGCI how it could hold that a notice is compulsory for such deduction without which the action would be arbitrary, whimsical and detrimental. We find it difficult to agree with such finding.

14. What emerges from the above discussions are:

(i) The allegation of misbehaviour or harassment by the second Appellant to the second Respondent has been held by the trial court as not proved;

(ii) The alleged wrong debit for an amount of Rs. 40,287.80 on account of payment of premium to the DICGCI was in March, '90 and, therefore, the second Appellant cannot be held to be liable for that;

(iii) The additional interest on the amount against NAL Co. bill charged by the Bank was in accordance with the Banking rules and regulations. The only grievance is that no advice or intimation was given to the Company to deposit marginal excess for avoiding such additional interest. Failure of giving advice or intimation cannot be said to be any malice as particularly there is no legal or contractual duty on the Chief Manager to furnish such information or tender such advice. In the three letters written by the Chief Manager (Exts. 16, 18 and 22), there is nothing to show that those were written out of malice on the part of the second Appellant.

15. Though an allegation has been made that the Company starved for ILOC for the period from 17.4.92 to 11.5.92 which fall within the three months extension period of ILOC, the Respondent-Company failed to prove what were the willful negligence on the part of the second Appellant causing such starvation. Without any proof such an allegation remains unsubstantiated.

16. We are afraid, the onus of establishing mala fide against the Chief Manager or the Zonal Manager, heavy as it is, has not been discharged by the Company and we are unable to agree with the findings of the learned trial court that the two officers of the Bank acted illegally, arbitrarily, whimsically and out of malice against the Company. We are, therefore, of the considered view that the second Appellant who was the Chief Manager of the Bank at the relevant time cannot be held to have acted out of malice in withdrawing the CCF and ILOC facilities for which we find sufficient justification on the part of the Bank and, therefore, we reject the findings of the learned trial court on the above three issues.

17. For the reasons stated and discussions made above, the appeal deserves to be accepted. Hence, the impugned judgment and decree are set aside and the appeal is allowed with cost.