
(2018) 07 GAU CK 0020
In the Gauhati High Court
Case No : Writ Petition (C) No. 1643 of 2010

M/S Unidus Agents And Distributors And 5 Ors APPELLANT
Vs
Central Bank Of India And Anr. RESPONDENT

Date of Decision : 11-07-2018

Acts Referred:

Recovery of Debts due to Banks and Financial Institution Act, 1993 — Section 31
Limitation Act, 1963 — Section 18
Indian Contract Act, 1872 — Section 25
Negotiable Instruments Act, 1881 — Section 76
Indian Evidence Act, 1872 — Section 102
Banking Regulation Act, 1949 — Section 45
Banking Regulation Act, 1948 — Section 21A
Constitution of India 1950 — Article 226
Limitation Act, 1963 — Article 113

Citation : (2018) 07 GAU CK 0020

Hon'ble Judges : KALYAN RAI SURANA, J

Bench : Single Bench

Advocate : B Sarma, B Begum

Final Decision : Dismissed

Judgement

(1) Heard Mr. K.V. Vishwanathan, learned Advocate appearing along with Mr. S. Khound, learned advocate for the petitioners. Also heard Mr. N.C.

Das, learned senior advocate, assisted by Mr. M.K. Mishra, learned advocate for the respondent No.1.

(2) The respondent No.2 is the Debts Recovery Appellate Tribunal, Kolkata. This is not an adversarial litigation against the said learned tribunal, the case was not contested on its behalf.

(3) By this writ petition under Article 226 of the Constitution of India, the petitioners have challenged the order dated 11.12.2009 passed by the learned

Debts Recovery Appellate Tribunal, Kolkata (DRAT in short) in Appeal No.51/2002, thereby setting aside and reversing the order dated 21.10.2002, passed by the learned Debts Recovery Tribunal, Guwahati (DRT in short), in OA No.52/2001.

(4) The brief facts of the case are that the petitioners (including the predecessor-in-interest of some petitioners) had availed cash credit and other

financial facilities from the erstwhile The Purbanchal Bank Ltd. The initial sanction letter was issued 12.07.1975. In course of time the said

Purbanchal Bank Ltd. was amalgamated with Central Bank of India on 29.08.1980. By a notice dated 26.11.1990, the respondent No.1 bank

demanding from the petitioners their dues of Rs.19,14,079.24/- as on October 1990. As the demanded sum remained unpaid, the respondent No.1 bank

instituted M.S. No. 63/1993 before the Court of Assistant District Judge, Tinsukia on 28.09.1990, for recovery of a sum of Rs, 34,41,790/- inclusive of

interest upto 31.08.1993, with further prayer for future interest at the rate of 22% per annum from the date of filing of the suit till realization. With the

enactment of the Recovery of Debts due to Banks and Financial Institution Act, 1993 (now renamed as Debts Recovery and Bankruptcy Act, 1993),

the DRT was established and by virtue of section 31 of the said Act, the said suit got transferred for disposal before the DRT, wherein it was

renumbered as OA No. 52/2001.

(5) The petitioners herein had filed their written statement and denied the allegations. It was, inter-alia, claimed that excessive interest was charged on

the loan account. It was also submitted that the demand promissory notes were executed on 21.03.1982, 01.08.1983 and 31.07.1986 and, as such

the claim was barred by limitation. Also it was stated that the Letter of Waiver dated 01.08.1988 and 30.06.1991 did not correspond to any of the

demand promissory notes and were never executed by the petitioners in favour of the respondent No.1, further claiming that the erstwhile Purbanchal

Bank Ltd. had obtained blank signed forms from them, which had been used by the respondent No.1 Bank, as such, they were put to strict proof of

their claim. The accuracy of statements of accounts was also disputed and the claim of the respondent No.1 Bank was denied.

(6) The learned Assistant District Judge, Tinsukia had framed the following issues for trial:

i. Is the suit maintainable in law?

ii. Whether there is cause of action for the suit?

iii. Whether the Purbanchal Bank Ltd. sanctioned Cash Credit Limit of Rs.2,50,000/- (Rs.1.5 lakhs against Hypothecation, Rs.50,000/-

against pledge of stocks and Rs.50,000/- against cheque purchase) to the defendants?

iv. Whether the Cash Credit facilities were raised to Rs.3 lakhs on 21.7.78 and then raised to Rs.5 lakhs on 18.1.79?

v. Whether the defendants' failure to liquidate the loan amount and on

their failure to keep financial commitments, a sum of Rs.19,14,079.24 became due and payable by the defendants as on October,

1990?

vi. Whether the plaintiff is entitled to a decree, as prayed for?

vii. (a) whether the suit is barred by law of limitation?

(b) whether the plaintiff-Bank in absence of any contract can claim the recovery from the defendants?

(7) The respondent No.1 Bank examined two witnesses in support of their claim. While the PW-1 was cross-examined before the Court of learned

Asstt. District Judge, Tinsukia, the PW-2 was cross-examined before the DRT, Guwahati. The PWs had exhibited the following documents:-

1. Application for financial assistance (Ext.1),
2. Sanction letter dated 10.12.1975 (Ext.2),
3. Demand promissory note dated 12.12.1975 (Ext.3),
4. Letter of Waiver dated 12.12.1975 (Ext.4),
5. Letter of Continuity (Ext.5),
6. Agreement for hypothecation of goods (Ext.6),
7. Agreement for hypothecation of debts and movable assets (Ext.7),
8. Agreement regarding collection of instruments (Ext.8),
9. Agreement to pledge of goods (Ext.9),
10. Letter of set off (Ext.10),
11. Sanction letter dated 21.07.1978 for enhancement of credit (Ext.11)

12. Sanction letter dated 18.01.1979 for enhancement of credit (Ext.12)
13. Demand promissory note dated 22.03.1979 (Ext.13),
14. Letter of waiver dated 22.03.1979 (Ext.14),
15. Letter of Continuity dated 22.03.1979 (Ext.15),
16. Letter of Authority dated 22.03.1979 (Ext.16),
17. Agreement for hypothecation of goods dated 22.03.1979 (Ext.17),
18. Agreement regarding collection of instruments dated 22.03.1979 (Ext.18),
19. Demand promissory note dated 21.03.1982 (Ext.19),
20. Demand promissory note dated 01.08.1983 (Ext.20),
21. Demand promissory note dated 31.07.1986 (Ext.21),
22. Letter of waiver dated 01.08.1988 (Ext.22),
23. Letter of waiver dated 30.06.1991 (Ext.23),
24. Notification of Amalgamation dated 28.08.1990 (Ext.24),
25. Copy of notification (Ext.25),
26. Demand notice dated 26.11.1990 (Ext.26), 27. Letter of modification dated 18.01.1979 (Ext.27), 28. Statement of accounts (Ext.28).

(8) The petitioners had examined Anil Kumar Barooah, the petitioner No.2 (since deceased) as DW-1 before the DRT, Guwahati. But the said

witness was not cross-examined, in consonance with the practice being followed in DRT, as cross-examination cannot be availed as a matter of right

in a routine manner.

(9) The learned DRT, Guwahati by order dated 21.10.2002, dismissed the OA No. 52/2001. In respect of issues No.1 and 7(b), it was held that the

respondent No.1 bank had stepped into the shoes of erstwhile Purbanchal Bank Ltd. and therefore, the claim was held to be maintainable. It was held

that the contract between the erstwhile Purbanchal Bank Ltd. has to be considered as a contract between the petitioners and the respondent No.1

Bank. In respect of issues No.2 and 7(a), the learned DRT held that it was unable to accept that Letter of Waiver dated 30.06.1991 (Ext.23) was

executed by the petitioner No.2. The learned DRT had accepted the plea of the petitioners that the said document, which was in the letter-head of

erstwhile Purbanchal Bank Ltd. was used on 30.06.1991. It was held that the said document, containing signature on unfilled forms, were obtained by the erstwhile Purbanchal Bank Ltd. Moreover, as there was no calculation of interest or maintenance of account after 31.05.1991, as such, it was held that there was no transaction in the loan account after April, 1987 except for some credit in respect of LIC policies made by the respondent No.1 Bank. Hence, it was held that the loan account was made upto-date by making entries in the statement of account on 18.08.1983, long after the cause of action had expired on 31.07.1986. Therefore, by holding that Ext.23 cannot be accepted as a genuine "Letter of Waiver", the claim filed on 28.09.1983 was held to be barred by limitation. The learned DRT had held that the issues No. 3 and 4 were unnecessary and they were struck off. In respect of issue no.5, it was held that the statement of account reflected charging of high interest to the extent of 18% to 20.5% as per Ext.28 and, as such, it was held that the statement of account was tainted with inflated charging of interest. Thus, it was held that the amount of Rs.34,41,790/-, as claimed by the respondent No.1 cannot be held to be the actual amount that was due in the loan account. In respect of issue No.6, it was held that in view of the decision on issues No.2 and 7(a), the respondent No.1 was not entitled to recover the claim amount, being barred by limitation. Hence, the claim petition was dismissed by the learned DRT by order dated 21.10.2002.

(10) The respondent No.1 Bank preferred an appeal before the learned DRAT, Kolkata which was numbered as Appeal No.51/2002.

(11) The learned DRAT, upon hearing the learned Advocates for the parties, had arrived at a finding that the petitioners had neither denied the execution of the aforesaid letter of waiver dated 30.06.1991 (Ext.23), nor disputed their signatures appearing thereon. It had been stated in their pleadings that erstwhile Purbanchal Bank Ltd. had obtained the signatures in some unfilled forms which had been utilized by the respondent No.1 Bank for saving the period of limitation for the claim case. It was observed that it was not the case of the petitioners that the signatures were obtained by coercion. Merely because forms of erstwhile Purbanchal Bank Ltd. were used after merger of the bank on 29.08.1990, such use cannot dislodge the veracity of the contents, which was executed with full knowledge of the executants. It was held that such signatures did not prove that the

petitioners were coerced to put their signatures in blank forms by the erstwhile banks. Hence, it was held that the finding by the learned DRT was on

the basis of surmises and conjectures, which cannot be sustained.

(12) It was held that by letter of waiver dated 01.08.1988 and 30.06.1991, the petitioners had acknowledged balance as on 31.07.1986, which means

that the balance as on the said date was a fixed one, but would become two different amounts due to accrual of interest. Hence, the finding by the

learned DRT that the petitioner No.2 had not executed the letter of waiver dated 30.06.1991 (Ext.23) with full knowledge of its contents is not

tenable.

In respect of levy of interest, it was held that the interest was leviable at the rate of 7% above RBI rate subject to minimum rate of 16% interest per

annum with quarterly rests. As the petitioners did not prove that during the relevant period the rate of interest of RBI had remained unchanged, as

such, it was held that it cannot be said that the charging of interest ranging from 18% to 20% was contrary to the terms of the contract.

(13) As regards the statement of accounts (Ext.28), the learned DRAT arrived at a finding that the said statement reflected a balance of

Rs.7,86,472.47 as on 08.07.1997, and that the amount of Rs.10,44,901.57 as on 30.06.1986 shown in Ext.28 was inclusive of interest, as such, it was

held that the finding by the learned DRT that the statement of accounts (Ext.28) was incorrect was a total misreading of the statement, and the said

finding was held to be not sustainable. Thus, the appeal was allowed and the claim case, being OA No. 52/2001 was allowed, however, with 8%

interest on and from 28.09.1993, the date of filing of the original claim case.

(14) The learned advocate for the petitioners had assailed the appellate order passed by the learned DRAT. It is submitted that a letter of

waiver, which is obtained as one of the documents creating security by a bank is never a stand-alone document, but it is to be always accompanied

by a demand promissory note (DPN for short), as such, its contents must co-relate to a DPN and in this regard, by referring to the DPN dated

12.12.1975 (Ext.3) and DPN dated 22.03.1979 (Ext.13), it is submitted that the corresponding letter waiver were also dated 12.12.1975 (Ext.4) and

DPN dated 22.03.1979 (Ext.14). However, in respect of DPN dated 21.03.1982 (Ext.19), 01.08.1983 (Ext.20) and 31.07.1986 (Ext.21), there was no

letter of waiver, but the letter of waiver dated 01.08.1988 (Ext.22) and 30.06.1991 (Ext.23) were without support of any DPNs. From the above, it is submitted that it is apparent that the blank signed forms of erstwhile Purbanchal bank Ltd. was misused to create letter of waiver dated 01.08.1988

(Ext.22) and 30.06.1991 (Ext.23), for which it contained a balance of 31.07.1986, by which no liability could be saddled on the petitioners.

(15) It is submitted that the statement of accounts (Ext.28) would reveal that there was no transaction in the accounts after April, 1987 except for

some credit in respect of LIC policies made by the respondent No.1 Bank. It is submitted that the cause of action for the respondent No.1 to make a

valid claim before the Court/ tribunal had expired on 31.07.1986, as such, it is submitted that the letter of waiver (Ext.23) cannot be accepted as

genuine and that the claim filed on 28.09.1983 was rightly held by the learned tribunal to be barred by limitation.

(16) The learned advocate for the petitioners has submitted that the entries made in letter of waiver dated 01.08.1988 (Ext.22) and 30.06.1991

(Ext.23) could not be treated as a letter of acknowledgement of debt within the meaning of Section 18 of the Limitation Act, 1963 as there was no

unequivocal acknowledgement of debt and, as such, the said writings also cannot be treated to be a valid contract within the meaning of section 25 of

the Contract to pay a time barred debt and, as such, it is submitted that the appellate order passed by the learned DRAT was not sustainable and it is

vitiating by jurisdictional error for incorrectly appreciating the documentary evidence. It is submitted that the said letter of waiver dated 01.08.1988

(Ext.22) and 30.06.1991 (Ext.23) are manufactured and fabricated document. In this regard, it is submitted that the erstwhile Purbanchal Bank Ltd.

was merged with the respondent No.1 bank on 29.08.1990, as such, there was no way that the Central Bank would use the old stationery of

Purbanchal Bank Ltd. for getting signature of the petitioners on 30.06.1991 on Ext.23, as the said bank had ceased to exist on and from 29.08.1990. It

is submitted that the said aspect of the matter was ignored by the learned DRAT.

(17) It is submitted that by notice dated 26.11.1990, a sum of Rs.19,14,079.24 was claimed as being due in October, 1990 and thereafter, the suit was

filed on 28.09.1993 for recovery of Rs.34,41,790/-, although there was no transaction in the accounts since 31.07.1986, which was established by the

statement of accounts (Ext.28). Hence, the case was hopelessly barred by limitation and was sought to be saved only on the basis of the said two manufactured letters of waiver. In this connection, it is submitted that in the affidavit filed before DRT, the petitioners had denied having executed the letter of waiver on 30.07.1991, but the said fact was never denied and, as such, the same amounted to admission. By referring to the statement made by the PW-1 in his cross-examination to the effect that at the relevant time when the documents were executed, he was not in the branch and, as such, it is submitted that the respondent No.1 had not proved the documents in accordance with law and, as such, the person acquainted with the writings and signature had not proved the document, for which it is submitted that the claim was liable to be rejected.

(18) It is submitted that the order passed by the learned DRAT was not sustainable on the ground that the said learned tribunal had not touched upon any of the submissions made on behalf of the petitioners and it merely gave its own reasons for setting aside the order passed by the learned DRT without discussing the submissions made by the learned advocate for the petitioners.

(19) It is submitted that this was a case which was based on DPN and, as the last DPN was executed on 31.07.1986 (Ext.21), the suit ought to have been filed before 30.07.1989, as such, the present case, having been filed on 28.09.1993 was hopelessly barred by limitation. It is submitted that 30.06.1991 was a Sunday and, as such, the letter of waiver dated 30.06.1991 (Ext.23) must be held to be a manufactured document.

(20) It is submitted that by a letter of waiver, it is merely agreed that the petitioners would not take advantage of non-presenting of DPN for payment, which was waived and, as such, the said letter of waiver cannot be treated as acknowledgement of debt, as was treated by the learned DRAT. It is also submitted that manner of presenting of DPN is prescribed in Section 76 of the Negotiable Instruments Act, 1881. Hence, it is submitted that the appellate order of the learned DRAT is not sustainable on facts and in law and it is submitted that the said order be set aside and quashed by restoring the order passed by the learned DRT. In support of his submissions, the learned advocate for the petitioners has placed reliance on the following

cases:-

- a. Ramji Dayawala & Sons (P) Ltd. Vs. Invest Import, (1981) 1 SCC 80.
- b. Sonseni Bibi (Musstt.) & Anr. Vs. Legal Heirs of Babul Boro & Ors., 2017 (4) GLT 152.
- c. Om Prakash Berlia & Anr. Vs. Unit Trust of India & Ors., AIR 1983 Bom 1 (printout from Docid # IndLawLib/453939)
- d. T. Ruthna Gramany & Anr Vs. N. Veerabudra Aiyar & Ors., (1913) 25 MLJ 281 (FB) (print-out from Docid # IndLawLib/206479).

(21) Per contra, the learned Senior Advocate for the respondent No.1 has referred to the affidavit- in- opposition filed in this writ petition. It is

submitted that highly disputed question of facts have been raised in this writ petition, which is on a subject matter, which has already been decided by

the DRT and then by the DRAT, where the decision of the learned DRT was reversed. Thus, it is submitted that the writ petition was not

maintainable. It is submitted that the order passed by the DRAT cannot be challenged in this writ petition, when the PW-1 and PW-2 examined by the

respondent No.1 were not cross examined on the point now raised in this writ petition.

(22) It is also submitted that that in the present case, the documentary evidence was exhibited before the Civil Court by orally recording the

examination- in- chief. However, when the allegedly blank signed letters of waiver, i.e. Ext.22 and Ext.23 were introduced as exhibits by PW-1, no

objection as to admissibility of exhibit was raised and, as such, it is too late in the day to object to the said exhibits. By further referring to the letter of

waiver (Ext.23) it is submitted that this is a case where the old stationery of erstwhile Purbanchal Bank Ltd. was used, which legally got merged with

the respondent No.1 bank and that on the said exhibited document, below printed Purbanchal Bank Ltd., it was written by hand as follows â?

â??Now, Central Bank of India, Tinsukia Market Branchâ?. Thus, it was not a case where the previously blank signed document was used to

manufacture letter of waiver, as alleged by the petitioners. It is also submitted that no evidence was led by the petitioners to prove that the â??letter

of waiverâ?? was a blank signed document, which was subsequently filled up.

(23) It is submitted that when the petitioner No.2 had signed letter of waiver on 30.07.1991, it was only with a view to waive the right of the

petitioners on non- presentation of DPN dated 31.07.1986, which amounts to

extension of the prescribed period of limitation. It is submitted that the argument advanced by the learned counsel for the petitioners to the effect that letter of waiver is referable to DPN, it is submitted that in the present case the said letter of waiver (Ext.23) was also referable to the DPN executed on 31.07.1986. It is submitted that from the letter of waiver dated 30.06.1991 (Ext.23), the suit was filed well within the period of limitation as prescribed under Article 113 of the Schedule to the Limitation Act, 1963. It is submitted that the entries made in the Statement of Accounts (Ext.28) was never disputed by the petitioners and, as such, the said document, in respect of which certified copy was admissible in evidence, cannot be attacked in this writ proceeding.

(24) In support of his submissions, the learned Senior Advocate for the respondent No.1 has cited the following cases:-

- a. Motilal Padampat Sugar Mills Co. Ltd. Vs. State of Uttar Pradesh, AIR 1970 SC 621 (printout from MANU/SC/0336/1978).
- b. Bennett Coleman & Co. (P) Ltd. Vs. Punya Prira Das Gupta, AIR 1970 SC 425 (printout from MANU/SC/0307/1969).
- c. Chandradhar Goswami & Ors. Vs. Gauhati Bank Ltd., AIR 1969 SC 1058 (printout from 1966 STPL 2042 SC).

(25) Having heard the learned advocate for the petitioners and the learned senior advocate for the respondent No.1, the LCR consisting of proceedings before DRT and DRAT have been perused.

(26) The points of determination that has arisen in this writ petition can be summarized as follows:-

1. Whether the order passed by the DRAT can be assailed in this writ petition?
2. Whether the impugned order passed by the learned DRAT is liable to interfered with in this writ petition?

(27) The point of determination No.1 is taken up first. In this connection, it is seen that this Court had issued notice of motion in the present writ

petition on 17.03.2010. As notice was duly served and LCR had been received, though not admitted, the matter was posted for hearing by order dated

30.01.2017. It is too well settled that under Article 226 of the Constitution of India, the High Court can issue a writ of certiorari in respect of orders

passed by Courts and Tribunals. If one needs an authority for the same, the case of T. Premasagar Vs. Standard Vacuum Oil Company, Madras, AIR

1965 SC 111, may be referred to, wherein the Honâ??ble Supreme Court has held that a writ of certiorari can be issued when the order of the inferior tribunal is shown to suffer from an error which is apparent on the face of the record and it was also held that it is not correct to say that unless an error of jurisdiction is established, or fraud is proved, no writ of certiorari can be issued. Thus, the challenge in this writ petition in respect of the order dated 11.12.2009, passed by the learned Debts Recovery Appellate Tribunal, Kolkata (DRAT in short) in Appeal No.51/2002 is held to be maintainable.

(28) Point of determination No. 2 is taken up now. The learned advocate for the petitioner has assailed the order passed by the learned DRAT, and

his submissions are summarized under following broad groups, (a) admissibility of â??Letter of Waiverâ?, being Ext.22 and Ext.23; (b) claim being

barred by limitation; (c) The PWs were not present when the exhibits were signed and, as such, the document is not proved in accordance with law,

(d) excessive charging of interest.

(29) Letter of Waiver is examined first.

a. On a perusal of the original LCR, it is seen that in â??Letter of Waiverâ? dated 01.08.1988 (Ext.22), there is over-writing on the date. However,

the same is signed by the original respondents No.2, 3, 4 and 5, whose signatures are marked as Ext.22(2), Ext.22(1), 22(3) and 22(4) respectively. It

is seen that below the signature marked as Ext.22(4), he had also written the date of 01.08.1988 by hand, which does not contain any over-writing.

The said exhibit is in the letterhead of The Purbanchal Bank Ltd., Tinsukia Branch, and has reference to DPN dated 31.07.1986 for Rs.7,86,472.47.

Thus, it is not at all believable that Ext.22 was written on blank signed document.

b. However, in respect of â??Letter of Waiverâ? dated 30.06.1991 (Ext.23), there is no over-writing anywhere. The same is signed by the original

respondents No.2, 3, 4 and 5, whose signatures are marked as Ext.23(2), Ext.23(1), Ext.23(3) and Ext.23(4). The said exhibit is in the letter-head of

The Purbanchal Bank Ltd., but below the name of the bank it is written in hand â??Now, Central Bank of India, Tinsukia Market Branch, Tinsukia,

Assamâ??. The said exhibit also has reference to the DPN dated 31.07.1986 for Rs.7,86,472.47.

c. Nothing has been brought on record to demonstrate before this Court that

merely for using the forms of erstwhile Purbanchal Bank Ltd., the document would become invalid, which cannot be accepted in respect of Ext.22, because as on 01.08.1988, the said Purbanchal Bank Ltd. was in existence. Moreover, the use of old forms of Purbanchal Bank Ltd. in respect of Ext.23 also cannot be said to be illegal, because very clearly it has been written by hand that now the bank is Central Bank of India. The name of branch is no longer Tinsukia Branch, which is reflected in all documents pertaining to the Purbanchal Bank Ltd., but now under Central Bank of India, the name of the branch is now Tinsukia Market Branch. Thus, in the opinion of this Court, a mere use of old form, but where name of new bank is reflected, cannot be enough to presume that old pre-signed document was misused by the respondent No.1 Bank.

d. From the cross examination of PWs No.1 and 2, it is seen that the said witnesses were not cross-examined on the point. Moreover, the petitioners had not taken any steps for forensic examination of the said Ext.23 to find out the age of its writing. It appears that as the petitioners had taken a plea that the old pre-signed blank documents were misused, the burden of proving the said defence would shift on them under the provisions of Section 102 of the Evidence Act, 1872. It is seen that the signature marked as Ext.23(2), Illustration (b) of Section 102 of the Evidence Act, 1872 would explain the point.

e. There is no dispute that a letter of waiver is related to DPN, and by the said document, it is merely agreed that the borrowers would not take advantage of non-presenting of DPN for payment, and that such right stands waived. As submitted by the learned advocate for the petitioners, the manner of presenting of DPN is prescribed in Section 76 of the Negotiable Instruments Act, 1881. Thus, it is seen that the non-presentation of DPN dated 31.07.1986 was waived by the petitioners. Thus, there appears to be no error in the finding by the learned DRAT that the limitation stands extended by the said letter of waiver (Ext.23), because while executing and signing Ext.23, the intention of all concerned was to waive the right flowing from non-presentation of DPN dated 31.07.1986. It is seen that the sum of Rs.7,86,472.47 stands tallied with amount stated in DPN dated 31.07.1986 (Ext.21), which is neither disputed nor denied by the petitioners.

f. As such, the over-all opinion of this Court is that there appears to be no

infirmity in the finding recorded by the learned DRAT that the observations by the learned DRT on Ext.22 and Ext.23 were based on surmises and conjectures.

(30) As regards when the claim is barred by limitation. This issue is dependent on the validity of 'Letter of Waiver' i.e. Ext.22 and Ext.23.

Therefore, notwithstanding that a letter of waiver is not an acknowledgement of debt, but by the said writing the intention of the parties is that the

validity of DPN dated 30.06.1986 is extended, which would extend the period of limitation for presenting DPN. Therefore, by notice of demand dated

26.11.1990 (Ext.26), as modified by letter of modification dated 18.01.1979 (Ext.27), the DPN is deemed to have been presented for payment and, on

refusal of the same to be honoured, the present suit was filed within the time prescribed in Article 113 of the Schedule of the Limitation Act, 1963 i.e.

within 3 (three) years from the date when the right to sue accrued. For the above reason, the cited case of Sonseni Bibi (Musstt.) (supra), is not found

to help the petitioners.

Thus, the finding on this count by the learned DRAT is found to be sustainable.

(31) As regards the plea that the PWs were not present when the exhibits were signed and, as such, the document is not proved in accordance with

law.

a. In this connection, it is seen that by way of notification of merger, issued by the Central Govt. under Section 45 and other relevant provisions of the

Banking Regulation Act, 1949 the erstwhile 'The Purbanchal Bank Ltd.' had merged with the Respondent No.1 Bank. Thus the loan sanctioned

to the petitioners had devolved on the respondent No.1 bank by operation of law.

b. Upon such merger, now it would be the officials of Central Bank of India, who would be the custodian of records of the borrowings by the

petitioners. Thus, in the present case in hand, an officer of the transferee bank cannot be held to be an incompetent witness, merely because he was

not present at the time of documentation.

c. The original loan was sanctioned on 10.12.1975, and the original documentation was executed on 12.12.1975 and renewed on 22.03.1979.

Thereafter, only DPN and letters of waivers were signed on 21.03.1982, 01.08.1983, 31.07.1986, 01.08.1988 and 30.06.1991. The PW-1 was

examined on 15.09.1995 and he was cross examined on 17.05.1996. The PW-2 was examined on 15.09.1995 and he was cross examined before

DRT on 09.07.2002. Thus, if a bank is required to prove document by calling as witness an officer, who was there in the year 1975 and 1979, in the

assumption of this Court, such a witness would be very hard to find because to be a bank employee of the range of Manager in 1975-1979, one would

be within the age range of 50-55 years, and would have reached age of superannuation of 58-60 years by 1983-1990. Moreover, as stated herein

before, the present loan account came over to the respondent No.1 by way of merger of two banks. No attempt has been made by the petitioners to

cross examine PWs in order to find out if officials who had sanctioned the loan and before whom the petitioners had signed documents were still

available with the bank. Thus, in the considered opinion of this Court, every bank holds for day- to day use, a signature card of the persons who

are authorized to transact with the bank and therefore, any official of the bank can prove the signatures of the borrowers and its constituents from its

records. In the present case, the PW-1 and PW-2 had not only identified the various signatures contained in Ext.22 and Ext.23 as indicated herein

before. The correctness of the identification of the signatories could not be demolished during cross examination. Thus, the signatures of original

respondentsdefendants No. 2 to 5 were duly proved by PW-1 and PW-2, whose competence cannot be questioned in the writ proceedings for the first

time, having not questioned the said witnesses on their competence.

d. Merely by asking question to a bank's official in cross examination whether such witnesses saw the documentation is not enough to question

the competence of PW-1 and PW-2 as a witness.

e. Thus, while holding that the evidence of PW-1 and PW-2 cannot be allowed to be questioned for the first time in the writ petition, it is also held that

it is open for the official witness of banks, government, government undertakings, companies, etc. to depose on the basis of records.

f. In the case of Om Prakash Berlia (supra), cited by the learned advocate for the petitioners, it has been held that mere production and marking of a

document as exhibit is not sufficient, but the signature and the handwriting must be proved. The disputed document is the Letter of Waiver (Ext.22 and

Ext.23). There is no quarrel with the ratio laid down in the case of Om Prakash

Berlia (supra). This court is of the considered opinion that in the present case, the two PWs were not questioned in the handwriting contained in bank's form (Ext.22 and Ext.23). Therefore, it must be presumed that if a blank document is signed and given by a borrower to a bank, it is given with an implied authority to the person to whom it is issued, to fill it up at an appropriate stage with necessary entries regarding liability is required to be made, as such, a borrower cannot be absolved from liability in the event any blank signed document given as security to the nationalized bank is given. The said ratio can be culled from the case of Mordeen V. Johny, (2007) IV BC 528, although the said case is in respect of a blank cheque given by the accused. Similar view was taken in the case of The J&K Bank V. Abhishek Mittal, 2012(1) DCR 189 (Del), where it was held that an accused cannot escape his liability only on the ground that blank cheque was given by him. Thus, the case of Om Prakash Berlia (supra) and Ramji Dayawala (supra) does not help the petitioner because, the PW-1 and PW-2 had identified the signatures contained in Ext.22 and Ext.23 and the contents of the said document that the same were "letters of waiver" appears to have been proved, and the PWs were not cross examined on the said document.

g. On the burden of proof, the learned counsel for the petitioners had cited the case of T. Ruthna Gramany (supra), and in this regard, it is seen that the respondent No.1 bank had discharged their initial burden of proving their case. But the petitioners had taken a defence that the respondent No.1 mis-utilized the blank signed document before the erstwhile document, as such, the respondent No.1 is found to have discharged their initial burden, but the onus then shifted on the petitioners to prove their defence, because, by not disputing their signatures, the petitioners had admitted that they had signed the Exts. 22 and 23, as such, they were required to prove their defence as envisaged under Section 102 of the Evidence Act, 1872. Hence, the said cited case is not found to help the petitioners.

h. Thus, no fault is found in order passed by the learned DRAT and, as such, the same deserves to be upheld.Â

(32) In respect of overcharging of interest, it is seen that the provisions of section 21-A of the Banking Regulation Act, 1948 provides that a banking transaction is not to be reopened by any court on ground of interest rate being

excessive. Thus, interest charged by banks not to be challenged in court. If one needs any authority on the same, the case of State Bank of India V. Yasangi Venkateswara Rao, (1999) 2 SCC 375 may be referred to.

(33) In view of the discussions above, this Court is of the considered opinion that the point of determination No. 2 is liable to be answered in the

negative and against the petitioners by holding that the impugned order passed by the learned DRAT is not liable to be interfered with in this writ petition.

(34) Thus, the impugned order dated 11.12.2009 passed by the learned Debts Recovery Appellate Tribunal, Kolkata (DRAT in short) in Appeal

No.51/2002 is upheld, as a result, this writ petition fails and the same stands dismissed. The parties are left to suffer their own cost of this writ petition.

(35) Let the LCR be returned back.