
(1989) 03 BOM CK 0035
In the Bombay High Court
Case No : L.P.A. No. 30 of 1987

Ratnagiri District Central Co. Op. Bank Ltd.	APPELLANT
Vs	
Dinkar K. Watve and Others	RESPONDENT

Date of Decision : 29-03-1989

Acts Referred:

Bombay Industrial Relations Act, 1946 — Section 53(1), 78, 78(1)(A), 79, 79(1)
Bombay Industrial Relations Rules, 1947 — Rule 53

Citation : (1989) 91 BOMLR 165 : (1989) 59 FLR 530 : (1994) 3 LLJ 447 :
(1989) MhLj 445

Hon'ble Judges : Sujata Manohar, J;C.S. Dharmadhikari, J

Bench : Division Bench

Advocate : B.R. Naik and Y.R. Naik, for the Appellant; R.S. Kulkarni, for R-1, for the Respondent

Final Decision : Allowed

Judgement

Sujata Manohar, J.—The appellant is the original Respondent No. 2. The 1st Respondent is the original petitioner. Respondents Nos. 2, 3 and 4 are original Respondents No. 1, 3 and 4. The appellant. The Ratnagiri District Central Co-operative Bank Ltd. is hereinafter referred to as the Respondent. The 1st Respondent -Dinkar Kashinath Watve-is hereinafter referred to as the petitioner.

2. The petitioner was an internal auditor of the Respondent-Bank at all material time. On 14.6.1965 he was served with a charge-sheet. This charge-sheet, after setting out various charges which were levelled against him, stated that the charges amounted to misconduct under the Standing Orders. Strict action was liable to be taken against the petitioner. The petitioner denied the charges by his reply dated 18.6.1965. Thereafter on 4.4.1966 the petitioner was served with a second charge-sheet containing further charges. Once again the charge-sheet reiterated that these charges constituted indiscipline and irresponsible behaviour under the Standing Orders of the Bank in respect of which action was liable to be taken against the petitioner. The charge-sheet also stated that the charges

amounted to misconduct under the Standing Orders of the Bank. The petitioner sent his reply to the second charge-sheet. Thereafter an enquiry was held against the petitioner. By its Order dated 1.6.1966 the respondent-Bank terminated the services of the petitioner with effect from 1st June 1966. The order of 1st June 1966 also stated that the conduct of the petitioner had been examined in the light of the Standing Orders of the Bank and it amounted to misconduct under the said Standing Orders.

3. By his letter dated 31.8.1966 in which the petitioner also referred to the Standing Orders applicable to the said Bank, the petitioner approached the Respondent-Bank as provided u/s 42, Sub-section (4), of the Bombay Industrial Relations Act, 1946. The respondent sent a reply dated 19/22.11.1966 denying the claim of the petitioner. No further action was taken by the petitioner under the Bombay Industrial Relations Act, 1946 against the respondent-Bank.

4. On 18.2.1969 the petitioner filed a dispute before the District Deputy Registrar u/s 91 of the Maharashtra Cooperative Societies Act, 1960 claiming reinstatement with back wages. The dispute was referred for decision to the Officer on Special Duty. In respect of this dispute the Co-operative Court gave an Award dated 29.1.1974 u/s 96 of the Maharashtra Co-operative Societies act, 1960 granting to the petitioner notice-pay for 6 months aggregating to Rs. 1,590 by way of damages. The prayer for reinstatement was refused. The petitioner filed an appeal from this Award before the Maharashtra State Co-operative Appellate Court being Appeal No. 297 of 1974. The 1st respondent-Bank filed cross-objections in the said Appeal. On 22nd November 1974 the petitioner withdrew the appeal in view of the fact that a Division Bench of this Court, following the judgments of the Supreme Court, held that the claim for reinstatement of an employee in case of dismissal from service or a claim for payment of back wages on the footing that he continued in law to be in service, was outside the scope of the jurisdiction of the Civil Court including the Co-operative Court. A Civil Court would have jurisdiction only to grant such reliefs as are permissible in civil law, such as damages for wrongful termination. The petitioner was, therefore, permitted to withdraw the appeal and was granted permission to take appropriate proceedings before a competent Court for reliefs which could not be granted by the Co-operative Court.

5. Just prior to withdrawing his appeal the petitioner, on 1st November, 1974, gave a second approach notice to the 1st respondent - Bank u/s 42, Sub-section (4) of the Bombay Industrial Relations Act, 1946. On 31st January, 1975 the present 2nd respondent-Union representing the petitioner filed an application before the Labour Court u/s 79(1) of the Bombay Industrial Relations Act, 1946 being BIR Application No. 12 of 1975. The same was ordered to be registered on 1.2.1975 subject to the office objection as to limitation. On 31st January, 1975 when this application was filed, Section 79(3) did not contain any proviso that the Labour Court may for sufficient reasons admit any application after the expiry of the period of 3 months specified under that section. Proviso to Section

79(3) was introduced by way of an amendment which was made by Maharashtra Act 47 of 1977. This Act was passed on 12.12.1977. Thereafter on 7.8.1978 the petitioner made an application before the Labour Court for condonation of delay in filing the application in view of the proviso to Section 79(3)(b) of the said Act.

6. It was however pointed out by the respondent-Bank that the said proviso, though enacted, had not been brought into operation. On 17.5.1979 the petitioner made a second application for condonation of delay in view of the fact that the said proviso had, by then, been brought into force. On this application the Labour Court passed an order on 27.11.1979 condoning the delay in filing the application. The Labour Court thereafter by its order dated 16.12.1981 held that out of various charges which had been levelled against the petitioner under the charge-sheet only one charge was proved. It also held that the punishment of termination of service of the petitioner was disproportionate to the charge proved. It however did not grant reinstatement to the petitioner. It granted to the petitioner back wages and compensation in lieu of reinstatement and costs.

7. The respondent-Bank filed an appeal against the said decision before the Industrial Court on 9.2.1982. The petitioner filed cross-appeal. The petitioner reached the age of superannuation upon attaining the age of 58 on 12.2.1982.

8. The Industrial Court allowed the appeal of the respondent-Bank and dismissed the cross-appeal of the petitioner by a common judgment. On merits the Industrial Court held that the order of termination was justified. It also upheld the contention of the 1st respondent-Bank that the application of the petitioner before the Labour Court was beyond the time prescribed under the provisions of Section 79 of the Bombay Industrial Relations Act and hence was barred by limitation. The Industrial Court further held that the proviso to Section 79 Sub-section (3) of the said Act was introduced by way of an amendment much after the petitioner filed his application before the Labour Court. Hence the said proviso was not applicable to the pending application of the petitioner. The Labour Court, therefore, had no power to condone the delay in filing the application. The Industrial Court further held that even if such power existed by reason of the said proviso, no grounds were made out by the petitioner for condoning the delay in filing the application. It, therefore, allowed the appeal of the respondent-Bank and dismissed the cross-appeal of the petitioner.

9. This order of the Industrial Court was challenged by the petitioner in writ petition filed in this Court on 4.7.1983 being Writ Petition No. 2165 of 1983. A learned Single Judge of this Court by his judgment and order dated 6.8.1986 allowed the petition and granted to the petitioner reinstatement with full back wages and consequential reliefs. The learned Judge held that the application before the Labour Court was made by the petitioner within the period prescribed u/s 79(3) read with rule 53(1) framed under the Bombay Industrial Relations Act. The learned Judge, inter alia, also held that sufficient grounds existed for condonation of delay in filing the application before the Labour Court and that the proviso to Section 79(3) was applicable to the said application. From this

judgment and order the present Letters Patent Appeal has been filed.

10. During the pendency of this appeal the respondent - Bank has deposited in Court a sum of Rs. 1,84,000/- pursuant to an order passed by a Division Bench of this Court on 25.3.1987. Under the said order the petitioner had the liberty to withdraw the said amount on furnishing a bank guarantee. Accordingly the petitioner withdrew the said amount on 31.4.1987 on furnishing a bank guarantee.

11. The present Letters Patent Appeal was dismissed in limine by a Division Bench of this Court on 28.4.1988 on the ground that the Letters Patent Appeal did not lie. The Supreme Court, however, by its order dated 27.1.1989 had held that the Letters Patent Appeal is maintainable and has set aside the judgment of the Division Bench of this Court. The Letters Patent Appeal has been remanded for a decision on merit. The Supreme Court had also permitted the petitioner to withdraw, out of the said sum of Rs. 1,84,000/- half the amount without furnishing any security and the petitioner has thereupon withdrawn half the said amount. For the balance amount he has furnished a bank guarantee.

12. The first question which arises for determination is whether the application of the petitioner being BIR Application No. 12 of 1975 before the Labour Court filed on 31.1.1975 u/s 79(1) of the Bombay Industrial Relations Act, 1946 is time-barred ?

13. The relevant provisions of Sections 78 and 79 of the Bombay Industrial Relations Act, 1946 are as follows:

Section 78(1) Labour Court shall have power to -

A. decide

(a) disputes regarding

(i) the propriety or legality of an order passed by an employer acting or purporting to act under the Standing Orders;

(ii) XXX XXX XXX

(iii) any change made by an employer or desired by an employee in respect of an Industrial matter specified in Schedule III [except item (5) thereof] and matters arising out of such change.

Section 79(1) xxx xxx xxx

(2) xxx xxx xxx

(3) An application in respect of a dispute falling under Clause (a) of paragraph A of Sub-section (1) of Section 78 shall be made

(a) if it is a dispute falling under Sub-clause (i) or (ii) of the said clause, within three months of the arising of the dispute;

(b) if it is a dispute falling under Sub-clause (iii) of the said clause, within three months of the employee concerned having last approached the employer under the proviso to Sub-section (4) of Section 42:

Provided that, the Labour Court may, for sufficient reasons, admit any application in respect of any dispute made to it under this sub-section after the expiry of the period of three months specified therefore under Sub-clause (a) or (b) as the case may be.

14. In the present case, as is apparent from the charge-sheet as well as the order of termination, the impugned order has been passed by the employer-Bank under its Standing Orders. The disputes therefore falls u/s 78(1)(A)(a)(i) of the said Act. It is, however, urged by Dr. Kulkarni, learned advocate for the petitioner that the dispute should not be considered as falling u/s 78(1)(A)(a)(i) because the 1st respondent-Bank has disputed in the course of some of the proceedings that the petitioner was its employee under the Standing Orders. He has submitted that, the dispute must be considered as falling u/s 78(1)(A)(a)(iii). Sub-clause (iii) deals with any change made by an employer in respect of an industrial matter specified in Schedule III except item (5) thereof. Under Schedule III sub item (5) deals with employment, including, inter alia, reinstatement and unemployment of persons previously employed in the industry concerned. Hence Dr. Kulkarni submits that the dispute falls under Sub-clause (iii) of Section 78(1)(A)(a). Looking, however, to the fact that the charge-sheets, the final order as well as the first approach notice all refer to the Standing Orders applicable to the respondent-Bank and looking to the fact that the charges are framed and the impugned order is passed under the relevant Standing Orders, the impugned order is clearly passed by the 1st Respondent-Bank acting or purporting to act under its Standing Orders. The dispute is, therefore, covered by Section 78(1)(A)(a)(i).

15. u/s 79(3) an application in respect of a dispute falling u/s 78(1)(A)(a)(i) has to be made within 3 months of the arising of the dispute. The Explanation to Section 78, however, makes it clear that a dispute falling under Clause (a) of Section 78(1)(A) shall be deemed to have arisen if within the period prescribed under the proviso to Sub-section (4) of Section 42, no agreement is arrived at in respect of an order, matter or change referred to in the said proviso.

16. Section 42, Sub-section (4) provides as follows:

42.(4) Any employee or a representative union desiring a change in respect of (i) any order passed by the employer under Standing Orders, or (ii) any industrial matter arising out of the application or interpretation of Standing Orders or (iii) an industrial matter specified in Schedule III, except item (5) thereof shall make an application to the Labour Court and as respects change desire in any industrial matter specified in item (5) of Schedule III, to the Industrial Court:

Provided that no such application shall lie unless the employee or a representative union has in the prescribed manner approached the employer with

a request for the change and no agreement has been arrived at in respect of the change within the prescribed period.

In other words, an application cannot be made in respect of a dispute relating to propriety or legality of an order passed by an employer under the Standing Orders unless the employee has approached the employer with a request for change and no agreement is arrived at in respect of such change within the prescribed period.

17. The prescribed period under the proviso to Section 42(4) is laid in Rule 53 of the Bombay Industrial Relations Rules, 1947. Rule 53(1) reads as under:

53(1) Any employee or a Representative Union desiring a change in respect of (i) any order passed by the employer concerned under Standing Orders or (ii) any industrial matter arising out of the application or interpretation of Standing Orders or (in) an industrial matter specified in Schedule III shall make an application in writing to the employer. An application for change in respect of an order passed by the employer under Standing Orders shall be made within a period of three months from the date of such order....

(2) Where an application has been made by an employee under Sub-rule (1) the employer and the employee may arrive at an agreement within fifteen days of the receipt of the application by the employer or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer for the local area or the representative of employees as the case may be.

18. The net result is that before an application can be made to the Labour Court challenging an order passed by an employer acting or purporting to act under the Standing Orders, the employee or a representative union has to approach the employer with a request for a change. Such an application under Rule 53(1) in respect of an order passed by the employer under Standing Orders shall be made within a period of 3 months from the date of the order. After the employer is so approached the employer and the employee may arrive at an agreement within 15 days of the receipt of the application or within such further period as may be mutually fixed by the employer and the employee or the Labour Officer. If no agreement is arrived at within 15 days or the mutually extended period, the dispute must be filed before the Labour Court within 3 months thereafter.

19. In the case of *The Raipur Manufacturing Co. Ltd. v. Okhabhai Devrajbhai* reported in AIR 1976 S.C. 693, the Supreme Court has interpreted Sections 78(1)(A)(a)(i), 79 (1) and (3) and 42(4) of the Bombay Industrial Relations Act, 1946 together with Rule 53. The Supreme Court has held that on a combined reading of Sections 78(1)(A)(a)(i), Explanation to Section 78, Section 79(3), Section 42(4) and Rule 53 it will be seen that an application to the Labour Court u/s 79(1) in respect of a dispute falling u/s 78(1)(A)(a)(i) must be made within three months from the arising of the dispute. The dispute would be deemed to have arisen if, within a period of 15 days from the receipt of the letter of approach u/s 42, Sub-section (4) by the employer or within such further period as may be

mutually fixed by the employer and the employee, etc. no agreement is arrived at in respect of the change desired by the employee. The period of three months u/s 79(3) should be calculated from this date.

20. In the present case, the impugned order was passed on 1.6.1966. The petitioner approached the respondent-Bank by his letter dated 31.8.1966 within the prescribed period of 3, months. The respondent-Bank denied : the claim made in the approach letter by its letter dated 19/22.11.1966. There was, therefore, no question of any time for arriving at an agreement being extended by mutual consent thereafter. After the expiry of 15 days from the approach letter, therefore, the dispute is deemed to have arisen in view of the explanation to Section 78. The petitioner was required to file an application before the Labour Court within 3 months thereafter. The petitioner did not do anything for a period of more than 2 years thereafter. He filed a dispute u/s 91 of the Maharashtra Co-operative Societies Act, 1960 only on 18.2.1969. His right to file an application before the Labour Court was, therefore, barred by the provisions of Section 79(3) long prior to his approaching even the Co-operative Court. There is no material on record to show that after August 1966 and up to February 1969 the time for arriving at an agreement between the petitioner and respondent-bank was extended by mutual consent. On the contrary, the Bank's letter of 19/22.11.1966 clearly denies the petitioner's claim.

21. It is the contention of the petitioner that he gave a second approach notice on 1.11.1974. He filed the application before the Labour Court on 31.1.1975 within a period of 3 months of the second approach notice. Hence his application must be considered as within the period prescribed u/s 79, Sub-section (3). This contention has no merit. Under rule 53(1) such an approach was required to be made by the petitioner within a period of 3 months from the date of the order of 1st June 1966 since the order was clearly under the Standing Orders of the Respondent-Bank. The petitioner's second approach notice of 1.11.1974 is made after almost 8 years. Such an approach notice is beyond the period prescribed in Section 53(1) and it cannot give rise to a fresh period of limitation u/s 79, Sub-section (3).

22. The petitioner has, therefore, contended that the order of 1.6.1966 must be construed not as an order passed under the Standing Orders but merely as a change made by the employer in respect of an industrial matter specified in Schedule III. The dispute would, therefore, fall u/s 78(1)(A)(a)(iii). In respect of such a dispute Rule 53(1) does not provide for any time limit for making an approach. Hence limitation period u/s 79(3) must be counted from his second approach, although made after a lapse of eight years. There is no merit in this contention. Looking to the chargesheets and the order passed by the respondent-Bank, the dispute falls u/s 78(1)(A)(a)(i). We will assume, however, for the sake of argument, that the application made by the petitioner before the Labour Court was u/s 78(1)(A)(a)(iii). Even so, Section 79(3) prescribes that an application before the Labour Court is required to be within 3 months of the employee

concerned having last approached the employer under the proviso to Sub-section (4) of Section 42. The petitioner approached the respondent-Bank on 31.8.1966. The time for filing an application before the Labour Court commenced 15 days thereafter and expired after three months.

23. Dr. Kulkarni contends that the petitioner last approached the employer on 1st November 1974 and hence his application before the Labour Court is in time. This argument has no merit. It proceeds on the assumption that the employee can continue to make repeated approaches to the employer for several years in the present case after an interval of more than 8 years although the employer has clearly turned down the approach when first made. There is no warrant for interpreting the words "last approached" in Section 79(3) in this fashion. These words in Section 79(3) are used in the context of a change in respect of a matter specified in Schedule III. The subject-matter of Schedule III is varied. Schedule III, inter alia, deals with matters such as health, safety and welfare of employees, amenities granted to the employees, matters relating to trade union organization, membership etc. which may be grievances continuing over a substantial length of time. When the grievance is a continuing grievance over a length of time, the employees or the representative union may have approached the employer for removal of a grievance more than once over a period of time. To cover such cases the phrase "last approach" is used in Section 79(3)(b). There is nothing in Section 79(3) or any other provision in the said Act or the Rules which permits an employee to make repeated approaches to the employer spread over several years after a change takes place. In the case of *Vithaldas v. Kohinoor Mills Co. Bombay* reported in 1979 Mh. L.J. 420 a Division Bench of this Court while construing Sections 42(4), 78 and 79 held that the object of these provisions was to secure the redressal of grievance by conciliation and negotiations, and secondly to enable the employer to have a second look at his act of dismissal (page 421). The Division Bench negative the contention that the period under Rule 53(2) was only directive and not mandatory. It observed, (p.424) "Such an interpretation would enable the employee to make an application years after such dismissal, and put the limitation contemplated under (1) the proviso to Section 42(4) as also (2) u/s 79(3) in motion, at his sweet-will. Limitation of three months prescribed u/s 79(3) thus can be extended by the employee himself to three or thirty years making mockery of such limitation itself. These observations apply with equal force to the present argument.

24. In the present case, the order of termination is of 1st June, 1966. The employee in fact made an approach to the employer on 31st August, 1966. There is no question in such a case of the employee making repeated approaches or a second approach after eight years. u/s 79(3)(b) therefore the petitioner was required to make an application to the Labour Court on the expiry of 15 days after the first approach. There is no question in the present case of the time for arriving at an agreement being extended by mutual consent. Hence even if Section 79(3)(b) applies to the present case, the period for making an application before the Labour Court expired long prior to 18th February, 1969

when the petitioner first filed a dispute before the Co-operative Court.

25. In these circumstances, the learned Single Judge was wrong in coming to the conclusion that the application before the Labour Court was within the period prescribed under the said Act and the said Rules.

26. It is further contended by the petitioner that the proviso to Section 79 Sub-section (3) applies to the present case. The Labour Court is, therefore, entitled, for sufficient reasons, to admit an application after the expiry of the period of 3 months specified u/s 79(3). The proviso was introduced by way of an amendment in 1979 long after the filing of the said application on 31st January, 1975. The application when it was filed Barred by limitation. It was also registered subject to objection as to limitation. A subsequent amendment cannot revive an application which is already time-barred when filed.

27. G.P. Singh in Principles of Statutory Interpretation, 4th Edn. 1988 at page 278 states as under:

".....after expiry of the period of limitation, the right of suit comes to an end, therefore, if a particular right of action had become barred under an earlier Limitation Act, the right is not revived by a later Limitation Act even if it provides a larger period of limitation than that provided by the earlier Act",

In the present case, therefore, the proviso which was introduced in Section 79(3) by an amendment brought into operation in 1979 cannot save an application which was time-barred on 31.1.1975 when it was made.

28. In the case of Yew Bon Tew v. Kendran Bas Mara reported in 1982 3 ALL.E.R. 833 the Privy Council considered a case arising under the Malaysian Public Authorities Protection Ordinance, 1948. Under the period of limitation prescribed in the Ordinance, the cause of action was barred by limitation. Under an amendment which subsequently came into effect, the cause of action would have been within the limitation period freshly prescribed if the amendment had been retrospective. The Privy Council held that the cause of action which had been timebarred could not be revived by a subsequent extension of period under a new amendment. It said: "The proper approach in determining whether a statute had retrospective effect was not by classifying it as procedural or substantive but by seeing whether, if applied retrospectively to a particular type of case, it would impair existing rights and obligations; and an accrued right to plead a time bar, which was acquired after the lapse of the statutory period, was in every sense a right even though it arose under a statute which was procedural". See in this connection S.S. Gadgil, Income Tax Officer, Bombay Vs. Lal and Company, ; AIR 1942 54 (Privy Council) , Appasami Odayar v. Subramanya Odayar ILR 20 Cal. 487; Mohesh Narain Munshi v. Taruck Nath Moitra and 1987 3 All.E.R. 694; House of Lords at p.696-97; Arnold v. Central Electricity Generating Board. Therefore, in the present case, since the period of limitation prescribed u/s 79(3) had already expired at the time when the proviso was brought into operation, the proviso cannot be applied to give power to the Labour Court to extend the period

of limitation which had already expired.

29. Even assuming that the proviso to Section 79(3) applies, in the present case there is no sufficient reason for admitting the application filed on 31.1.1975 in respect of an order which was made as far back as 1st June, 1966. In the first application which the petitioner had filed before the Labour Court for condonation of delay, the only ground which was set out by him in his application was that he had been wrongly advised to file an application under the Maharashtra Co-operative Societies Act instead of under the Bombay Industrial Relations Act, 1947. Hence the time taken by him in pursuing his remedy under the Maharashtra Co-operative Societies Act should be excluded and his application for condonation of delay should be granted. This ground for condonation of delay is far from satisfactory. In the first place, the petitioner had given an approach notice on 31.8.1966. This was under the provisions of Section 42(4) of the Bombay Industrial Relations Act. It cannot, therefore, be said the petitioner was unaware of his remedy under the Bombay Industrial Relations Act. Secondly there is no justification at all for the delay of a period over 2 years in filing an application even before the Co-operative Court u/s 91 of the Maharashtra Co-operative Societies Act, 1960. This dispute was filed only on 18.2.1969. When the Bombay Industrial Relations Act requires an application to be made within a period of 3 months of the approach (with the addition of further period required for arriving at an agreement under the proviso to Section 42 Sub-section (4) a delay of more than 2 years does require some explanation. This explanation is allegedly forthcoming in the second application for condonation of delay which the petitioner made on 17.5.1979. In the second application for condonation of delay the petitioner has set out that one Shri Salvi, the then Vice-Chairman of the respondent-Bank, was attempting a settlement between the petitioner and the respondent-Bank and hence there was delay in filing a dispute under the Maharashtra Cooperative Societies Act. No particulars are given in the application about the period during which such attempts were made by Shri Salvi. It is not clear whether this attempt was during the period between the approach notice given by the petitioner on 31.8.1966 and the letter of 19/22.11.1969 of the respondent-Bank rejecting the claim of the petitioner. It is also not clear whether these attempts, assuming that they were there, continued after November 1966 till February 1969. This explanation also was given very belatedly by the petitioner more than 7 of 8 years after the dispute arose. It is without any particulars. Hence not much reliance can be placed on such an explanation. In the absence, therefore, of any sufficient cause being made out by the petitioner for condonation of delay in making the application to the Labour Court, there is no reason why the Labour Court should have condoned the delay of more than 8 years and have admitted the application of the petitioner. Assuming, therefore, that the proviso to Section 79 Sub-section (3), applies to the application of the petitioner, there is no sufficient reason for admitting the application of the petitioner after a lapse of 8 years from the date when the dispute arose. In any event, therefore, there is no merit in the contention of the petitioner.

30. In the result, appeal is allowed. The order of the learned Simple Judge is set aside and the order of the Industrial Court is confirmed. The petitioner however, has been permitted by the Supreme Court to withdraw Rs. 92,000 unconditionally. Dr. Naik very fairly stated that the respondent-Bank will not recover the said amount from the petitioner. For the balance of Rs. 92,000 the petitioner has given a bank guarantee. Liberty to the respondent-Bank to realise the bank guarantee.

31. In the circumstances of the case, however, there will be no order as to costs.