

(2004) 05 SIK CK 0003

In the Sikkim High Court

Case No : Regular First Appeal No. 4 of 2001 and C.M.A. No. 129 of 2003

State of Sikkim

APPELLANT

Vs

The Jammu and Kashmir Bank Ltd.

RESPONDENT

Date of Decision : 28-05-2004

Acts Referred:

Citation : AIR 2005 Sikk 12 : (2006) 132 CompCas 514

Hon'ble Judges : N. Surjamani Singh, J

Bench : Single Bench

Advocate : S.P. Wangdi, General assisted by J.B. Pradhan, Government Advocate and Karma Thinlay, Asstt. Government Advocate, for the Appellant; B.R. Narang and N.K.P. Sarraf for Respondent No. 1, A.K. Sarkar, N. Rai and Jyoti Kharka for Respondent No. 2 and B. Sharma and D.B. Katwal for Respondent No. 3., for the Respondent

Judgement

N. Surjamani Singh, J.—The judgment and decree dated 15th February 2001 passed by the District Judge (E and N) in Civil Suit No. 21 of 1994 is the subject-matter under challenge in this appeal preferred by the plaintiff, appellant herein. The facts of the case, in a short compass, are as follows :--

The plaintiff, the State of Sikkim, the appellant herein filed a suit being Civil Suit No. 9 of 1992 which is subsequently renumbered as Civil Suit No. 21 of 1994 before the Court below against the defendants, the present respondent Nos. 1, 2 and 3 herein for a decree for declaring that the plaintiff/ appellant is entitled to recover a sum of Rs. 40 lakhs from the defendant No. 1, first respondent herein, for payment of the same by the first defendant coupled with a prayer for a decree for permanent injunction restraining the first defendant from returning the deposits or releasing the securities de-positd by M/s. Sikkim Subba Associates and Shri Karan Luthra and also for restraining the defendant Nos. 2 and 3 from withdrawing the deposits made by them and getting a release of the securities, with the first defendant Bank in connection with the Bank Guarantee No. JKB:/CB/91-32 dated 24th April, 1991 by contending, inter alia;--

"That Government of Sikkim through its Secretary to the Government of Sikkim, Finance Department appointed M/s. Sikkim Subba Associates as Organising Agents for running Sikkim State Weekly Lotteries by an agreement dated 22-1-1991.

The partners of M/s. Sikkim Subba Associates are as follows :--

- (1) Shri Sanjayraj Subba Singtam S/o late Dhan Bahadur Subba. East Sikkim
- (2) Smt. Tilmaya Subbeni, Singtam, D/o Shri P.B. Subba East Sikkim. (3) Sri Ajay Limboo, Singtam, S/o Sri Ser Bahadur Limboo East Sikkim. (4) Sri Antara Subba, Singtam, S/o Sri D. B. Subba East Sikkim.
- (5) Sri Ser Bahadur Limboo Sirwani, P.O. S/o Asar Singh Limboo Singtam, East Sikkim. (6) Shri Mani Kumar Subba, Sirwani, P.O. S/o Dhan Bahadur Subba Singtam, East Sikkim.
- (7) Sri Asar Singh Limboo, Sirwani, P.O. S/o late Karnadhoj Singtam, Limboo East Sikkim.

Subsequently M/s. Sikkim Subba Associates, on 5-2-1991 entered into an agreement with the following persons.

- (1) Shri Karan Luthra, 14-15F, Connaught Place, New Delhi. (2) Shri Ujjwal Khatiwada 5th Mile, Tadong, Gangtok, East Sikkim. (3) Shri Siddarath Munirka, New Delhi

According to the plaintiff/appellant, the aforesaid persons through their legal advisor and agent Shri N. B. Khatiwada, Advocate, submitted to the Director of Lotteries, Government of Sikkim on 25-4-1991, a Bank Guarantee No. JKB/CB-91-32 dated 24-4-1991 for Rs. 40.00.000/- only, issued by the Manager of the Defendant Bank to M/s. Sikkim Subba Associates, Karan and Co., 14-15-F, Connaught Place, New Delhi. On scrutiny of the said Bank Guarantee on 26-4-1991, the Director of Lotteries, Government of Sikkim found that the name of the Firm "M/s. Sikkim Subba Associates, Karan and Co., 14-15-F, Connaught Place, New Delhi" was mentioned in the said Bank Guarantee and the Director of Lotteries, Shri L. B. Pradhan told Shri N. B. Khatiwada that the agreement dated 22-1-1991 is between the Government of Sikkim and M/s. Sikkim Subba Associates and the name of Karan and Co., should not appear in the said Bank Guarantee. In the course of discussion on 26-4-1991 in the Office of the Finance Secretary, Shri N. B. Khatiwada stated that the purpose of insertion of the name of "Karan and Co." was necessary to indicate that M/s. Sikkim Subba Associates would operate from the office of M/s. Karan and Co., for the time being as they had no office accommodation at New Delhi at that time. Shri Khatiwada further assured that he would get the said Bank Guarantee corrected to that extent. The Finance Secretary, Government of Sikkim, allowed the draw of Lotteries to be held from 26-4-1991 on the assurance of Shri N. B. Khatiwada that the Bank Guarantee would be corrected suitably. Shri G. P. Pradhan, the Finance Secretary was leaving for Calcutta on 29-4-1991 and thence to Delhi. Shri L. B. Pradhan,

the Director of Lotteries, handed over the Bank Guarantee to the Secretary, finance Department, Government of Sikkim, on 28-4-1991, at Gangtok, to take the same personally to New Delhi for handing over M/s. Sikkim Subba Associates for correction in the Bank Guarantee as promised by Shri N. B. Khatiwada earlier. On his return to Gangtok the Finance Secretary informed the Director of Lotteries that he had handed over the Bank Guarantee to Shri N. B. Khatiwada and that Shri N. B. Khatiwada returned the Bank Guarantee to the former saying that the Jammu and Kashmir Bank had made the necessary corrections. As M/s. Sikkim Subba Associates have violated various terms and conditions stipulated in the agreement dated 22-1-1991 and have defaulted in the payment of huge sums of money towards its agency fees etc., the Government of Sikkim decided to Invoke the said Bank Guarantee and wrote to the Manager of the defendant Bank vide, memo No. 951/Fin/ Lott. Dated 7-1-1992 to make payment of Rs. 40,00,000/- to the Government of Sikkim, Finance Department; but the Bank expressed its inability to pay the amount under the guarantee on the ground that Shri Karari Luthra does not owe any money to the Government of Sikkim. Thereafter, a notice, being No. RBS/14/92 dated 25-2-1992, was issued through the Standing Counsel, Directorate of Lotteries Shri R. B. Subba demanding the payment of Rs. 40,00,000/- guaranteed on the said Bank Guarantee dated 24-4-1991 giving one month's time. The reply to the said notice was received by Shri R. B. Subba on 6-4-1992 and from the said reply being No. DGM(L)92-1 dated 26-3-1992, it came to the notice of Director of Lotteries that the said Bank Guarantee dated 24-4-1991 being a valuable document has been submitted after having been forged and tampered with.

The Deputy General Manager (Law) of the Defendant Bank in the aforesaid letter dated 26-3-1992 has stated that wherever the name of the firm M/s. Sikkim Subba Associates, Karan and Co., 14-15-F, Connaught Place, New Delhi was appearing in the guarantee bond No. JKB/CB/91-32 dated 24-4-1991 the letters "C/o" has been inserted after the words M/s. Sikkim Subba Associates. Therefore, the Deputy General Manager (Law) expressed that the Bank Guarantee bond having been materially altered by inserting the letters "C/o" in the valuable document cannot pay the sum of Rs. 40,00,000/-, guaranteed under the bond. The defendant. Bank knew very well that the Plaintiff had entered into an agreement only with M/s. Sikkim Subba Associates. As such, M/s. Sikkim Subba Associates, Karan and Co., 14-15-F, Connaught Place, New Delhi were never appointed as Organising Agent for running Sikkim State Weekly Lotteries. Therefore, the Manager of the defendant Bank could not and cannot issue a Bank Guarantee to the extent of Rs. 40 lakhs on the basis of a non-existent agreement. The Manager of the defendant bank after having perused the agreement dated 22-1-1991, entered into between the Government of Sikkim and M/s. Sikkim Subba Associates, and the partnership agreement between M/s. Sikkim Subba Associates and Shri Karan Luthra and Ors. dated 5-2-1991, and after having been satisfied with the aforesaid documents, acted upon the same and issued the Bank Guarantee No. JKB/CB-91-32 dated 24-4-1991 for Rs. 40

lakhs and obliged themselves to meet the financial obligation of Rs. 40 lakhs only, if M/s. Sikkim Subba Associates failed to meet its financial obligation to the plaintiff. It is also the case of the plaintiff that the basis of the issue of the aforesaid Bank Guarantee was the agreement dated 22-1-1991 entered into between the plaintiff and M/s. Sikkim Subba Associates, partnership deed dated 23-1-1991 and the partnership agreement dated 5-2-1991. The Secretary to the Government of Sikkim in the Department of Finance had rightly objected that the name of M/s. Karan and Co., should not be tagged with M/s. Sikkim Subba Associates for the reasons that "Karan and Co.," never entered into any agreement with the Government of Sikkim and "Karan and Co.," were never appointed organizing agents for running the Sikkim State Lotteries. Shri Karan Luthra and Ors. have entered into an agreement with M/s. Sikkim Subba Associates on 5-2-1991 and Shri Karan Luthra, along with others, had become partners with M/s. Sikkim Subba Associates by virtue of the partnership agreement dated 5-2-1991 and also became liable to the plaintiff by virtue of the aforesaid agreement of partnership.

It is also the case of the plaintiff that Shri Karan Luthra as a partner with M/s. Sikkim Subba Associates is liable for all liabilities of the firm M/s. Sikkim Subba Associates. Since money is now due from M/s. Sikkim Subba Associates, one of its partners under the agreement dated 5-2-1991, namely Shri Karan Luthra, is liable for the whole amount. And as such the defendant is liable to honour the Bank Guarantee No. JKB/GB/ 91-32 dated 24-4-1991 for Rs. 40 lakhs. The letter No. DGM(L)92-1 dated 26-3-1991 is nothing but an attempt by the defendant to evade its strict legal liability, because, the defendant Bank very well knew that the Bank Guarantee was executed by it only if M/s. Sikkim Subba Associates failed to honour the agreement with the Government of Sikkim and not M/s. Sikkim Subba Associates, Karan and Co., 14-15-F, Con-naught Place, New Delhi. That from the facts and circumstances enumerated in the preceding paragraphs it is clear, beyond any doubt, that the defendant Bank executed the guarantee bond dated 24-4-1991 with the knowledge that it would indemnify the plaintiff against the failure on the part of the M/s. Sikkim Subba Associates to meet its financial obligation to the plaintiff to the extent of Rs. 40 lakhs only, and hence the plaintiff is entitled to enforce the Bank Guarantee against the defendant.

That the defendant in collusion with M/s. Sikkim Subba Associates and Shri Karan Luthra is now attempting to wriggle out of its commitment to the plaintiff as per the Bank Guarantee dated 24-4-1991.

That it is likely that the defendant Bank will return the deposits made by M/s. Sikkim Subba Associates and Shri Karan Luthra to them and will release the securities of M/s. Sikkim Subba Associates and Shri Karan Luthra with the defendant Bank in connection with the Bank Guarantee on or after 23-4-1992.

That the Bank Guarantee dated 24-4-1991 is still in force and as such the defendant is liable to pay a sum of Rs. 40 lakhs to the plaintiff on the basis of the said Bank Guarantee."

The plaintiff made the above pleadings and statements in its plaint for the reliefs sought for therein.

2. The suit of the plaintiff, appellant herein, is/was contested by the defendants, respondents herein before the trial Court by filing written statements. According to defendant No. 1, the trial Court has no territorial jurisdiction to entertain the suit inasmuch as all the defendants are working for gains at New Delhi, no part of cause of action has arisen at Gangtok and the Bank Guarantee, in question, was issued at New Delhi and could be invoked at Delhi and therefore, this suit only be filed at New Delhi and so far the Bank Guarantee is concerned, the defendant No. 1 /respondent No. 1 Bank had agreed to pay the said amount in case M/s. Sikkim Subba Associates Karan and Co., defaulted in payment of its obligations and further the amount was to be due from Sh. Karan Luthra. The defendant No. 1 further contended that the aforesaid Bank Guarantee which was a valuable security had been tampered with by the plaintiff and the same was materially altered so that the defendant No. 1 is required to meet the liability of M/s. Sikkim Subba Associates instead of M/s. Sikkim Subba Associates Karan and Co. The defendant No. 1 also made pleadings and statements in the following order :-- .

"The answering defendant never knew about the plaintiff having entered into an agreement with M/s. Sikkirn Subba Associates, As a matter of fact, it was never the concern of the answering defendant to examine the aforesaid document. When the guarantee is issued by the Bank, the pro-forma is supplied by the client and before the issue of the guarantee the Bank would try to protect itself by taking sufficient security so that in case the guarantee is invoked the Bank is not put to loss. The banks honour the guarantee on its face value. In this case the problem had arisen inasmuch as the bank guarantee has been tampered with and since the bank guarantee was tampered with, the defendant No. 3 who had obtained the bank guarantee made allegations of fraud inasmuch as he said that he had obtained the guarantee so that he would run the business under the name and style of M/s. Sikkim Subba Associates Karan and Co., and that his name would be added with M/s. Sikkim Sabha Associates and, therefore, he had produced before the bank the documents issued by the plaintiff indicating that the plaintiff had stated that they had no concern with M/s. Karan and Cc. When the guarantee was originally invoked it was never stated that there was a liability of Sh. Karan Luthra, but later on it was pointed out that the plaintiffs have taken up the plea that Sh. Karan Luthra is a partner of M/s. Sikkim Subba Associates which is a registered firm. These allegations of the plaintiff, on the face of it are false. The answering defendant has to construe the guarantee strictly so that the default must be by M/s. Sikkirn Subba Associates Karari and Co., and not by M/s. Sikkim Subba Associates. It is further stated that the guarantee has been tampered with and no claim can be lodged on the basis of tampered guarantee.

As regards objection of the Government of Sikkim to the name of Karan and Co., being tagged with M/s. Sikkim Subba Associates and alleging that M/s. Karan

and Co., had no concern with the Government of Sikkim, it is strange now to allege that Karari and Co., is liable to the Government of Sikkim and that there is liability due from the defendant No. 3.

The allegations of the plaintiff is that the amount: is due from M/s. Sikkim Subba Associates and the answering defendant does not recognize M/s. Sikkim Subba Associates as the person for whom the guarantee had been given by the answering defendant. The answering defendant gave the guarantee for M/s. Sikkim Subba Associates, Karan and Co., and it was for the plaintiff not to have accepted the said guarantee iruease it was not acceptable. The tampering of the guarantee is no solution to the problem. The only proper way was that the defendant bank should have been approached and the answering bank, in case the defendant No. 3 had agreed, would have issued a fresh guarantee in the place of the original guarantee. The method adopted by the plaintiff i.e., tampering of the guarantee is not acceptable to the defendant No. 1 and in any case the said tampering had invalidated the said bank guarantee. It is false to allege that, the answering defendant knew that the bank guarantee was executed on behalf of M/s. Sikkim Subba Associates. It was only issued on behalf of M/s. Sikkim Subba Associates Karan and Co."

The main plea of the defendant No. 1 in the case is that in view of the material tampering of the guarantee issued by the defendant No. 1 Bank, by the plaintiff-appellant, without the consent and knowledge of the defendant-respondent No. 1 Bank, no amount is payable under the said instrument which has become invalid.

3. It is the case of the defendant No. 2 that the plaintiff Bank has no right to stop or restrain the defendant No. 2 from realising its dues from the defendant No. 1 in accordance with the law and the entire suit of the plaintiff is based on surmises and conjectures and according to the defendant No. 2, the alleged agreement dated 5th February 1991 between M/s. Sikkim Subba Associates and three others was an arrangement for sharing the profits of the business, but did not amount induction of partners in the registered firm already in existence at that time and no default was committed by the defendant No. 2 in terms of the agreement dated 22nd January 1991 pertaining to the running of the Sikkim State Weekly Lotteries and these facts have been substantiated by the award given by the learned Arbitrator in favour of the defendant No. 2, reference to it has been made in the preliminary objection as raised by defendant No. 2 in the written statement. It is also the case of the defendant No. 2 that in the said suit, the plaintiff/appellant is trying to take advantage of a document which, on the face of it is neither genuine nor enforceable and the said was filed on the basis of Bank Guarantee which was tampered with by the plaintiff. The defendant No. 2 also questioned the territorial jurisdiction of the said suit by stating that the same is not. maintainable.

4. Defendant No. 3 in his written statement has contended that the present suit is not maintainable against him either for recovery of money or for injunction as the suit is filed on the basis of Bank Guarantee wherein the defendant No, 1 has

pledged its credit to the plaintiff and the plaintiff has accepted the same. It has also been contended that there was no contract between the plaintiff and the defendant No. 3 and as such there being no privity of contract between the two i.e. plaintiff and the defendant No. 3, present suit is liable to be dismissed. It is further stated in the written statement of this defendant that defendant No. 2 is a registered partnership firm having seven partners of which he is not a partner of defendant No. 2. According to him, Shri M. K. Subba, one of the partners of defendant No. 2, entered into an agreement with this defendant and two others in order to share the profits of the business which Shri M. K. Subba was carrying on along with six other partners. The defendant further contends that Shri M. K. Subba as a partner of M/s. Sikkirn Subba Associates cannot enter into a partnership with any other person or persons unless the existing firm is reconstituted and all the partners agree to the reconstitution of firm and the contract in the nature of an agreement by firm with another person cannot amount to creation of a new partnership. The defendant No. 3 has further stated that on the request of Shri M. K. Subba this defendant had obtained Bank Guarantee for Rs. 40 lakhs from the defendant No. 1 for M/s. Sikkirn Subba Associates, Karan and Co. and also got incorporated in the guarantee that the liability of Shri Karan Luthra towards the plaintiff would be indemnified in the said guarantee. It is further case of this defendant No. 3 that defendant No. 1 was never approached by the defendant No. 2 to issue present Bank Guarantee and that the said Bank Guarantee was issued by the defendant No. 1 at the behest of the defendant No. 3 and hence, Shri N. B. Khatiwada having not been given any authority by this defendant to get the said guarantee rectified cannot and could not do so. It has also been contended that even defendant No. 1 had no authority to rectify the Bank Guarantee without consent of this defendant who alone had obtained the particular Bank Guarantee. It is also stated that Bank Guarantee has been tampered with and so defendant No. 1 is not bound by it.

5. On the basis of the pleadings of the parties the trial Court framed as many as 13 issues for Just determination of the real points in controversy between the parties. Those issues are quoted below :--

"ISSUES

1. Is the plaintiff entitled to recover a sum of Rs. 40 lakhs from the first defendant?
2. Is the suit maintainable in its present form?
3. Has this Court territorial jurisdiction to try the present suit?
4. Has the guarantee issued by the defendant No. 1 been materially altered and therefore, ceased to be enforceable?
5. Has the defendant No. 1 Bank given guarantee for M/s. Sikkim Subba Associates, Karan and Co. or M/s. Sikkim Subba Associates to the Plaintiff?
6. Has the plaintiff any right to invoke guarantee of the defendant No. 2?

7. Whether the present suit has become in fructuous as the present dispute has been decided by the Arbitrator vide its award dated 8-2-1994?
8. Has the plaintiff any cause of action against the defendants?
9. Is there any amount recoverable from the defendant No. 2 by the plaintiff?
10. Whether the suit is bad for misjoinder of the parties?
11. Whether the suit is barred by law of limitation?
12. Is the plaintiff entitled to permanent injunction restraining the defendant No. 1 from returning the deposits or releasing the securities deposited with it by M/s. Sikkim Subba Associates and Shri Karan Luthra in connection with the Bank Guarantee?
13. Is the plaintiff entitled to permanent injunction restraining the defendant Nos. 2 and 3 from withdrawing the deposits made by them and getting release of the securities with the defendant No. 1 in connection with the Bank Guarantee No. JKB/CB-91-92 dated 24-4-91?"

The trial Court disposed of the suit on merit thus dismissing the suit as well as vacating the earlier ad interim injunction order dated 18th April 1992 under the impugned Judgment and decree dated 15th February 2001 passed in Civil Suit No. 21 of 1994. Being aggrieved by the impugned Judgment and decree, the plaintiff-appellant filed the present appeal.

6. At the hearing, Mr. S. P. Wangdi, learned Advocate General appearing on behalf of the State-appellant/plaintiff in his usual frankness at the very outset submitted that the present appeal has not merit. After proper application of my mind in this matter, I am also of the view that the trial Court gave reasoned findings on the related issues in the suit and as such no interference of it is called for and accordingly, the present appeal is dismissed thus affirming the impugned judgment and decree dated 15th February 2001 passed in Civil Suit No. 21 of 1994.

7. Despite the dismissal of this appeal preferred by the State-appellant, this Court require the disposal of an application filed by the defendant/respondent No. 2 being C.M.A. No. 129 of 2003 to meet the ends of justice. It may be mentioned that during the pendency of the abovementioned appeal (R.F.A. No. 4 of 2001), the respondent-defendant No. 2 filed the said Misc. Application dated 22nd November 2003 for an appropriate order and/or direction directing the defendant/respondent No. 1 Bank to release to the defendant/respondent No. 2 within 3 days of the disposal of the appeal, all the securities being fixed deposits along with interest which have been kept by the respondent No. 1 Bank till date and the details of which as on 24th April 2001 and 29th September 2001 are mentioned in paragraph 7 of the said application dated 22nd November 2003. The details of the deposits which were/are being kept by the respondent No. 1 Bank during 2000-2001 as a security for issuance of the Bank Guarantee No. JKB/

CB/91-32 dated 24th April 1991 are as hereunder :--

"S. No. FDR No. Particulars Amount 1 0301547/M dt. M/s. Sikkim Subba Associates 24-4-2000 & Karan & Co. (Maturity Date 24-4-2001) 25,44,596.52

2. 0301548/M dt. M/s. Sikkim Subba Associates 24-4-2000 & Karan & Co. (Maturity Date 24-4-2001) 25,44,596.52

3. 0301549/M dt. M/s. Sikkim Subba Associates 28-11-2000 & Karan & Co. (Maturity Date 29-9-2001) 35,28,927.88

4. 0301550/M dt. M/s. Sikkim Subba Associates 24-4-2000 & Karan & Co. (Maturity Date 24-4-2001) 12,45,350.10 Total 98,63,471.02 8. The said application was/is resisted by the respondent No. 1 Bank and also the respondent No. 3 by filing reply to it. Supporting the case of the respondent-defendant No. 2 (application in C.M.A. No. 129 of 2003, in short applicant), Shri A. K. Sarkar, learned Counsel contended that consequent to the judgment and order dated 1st May 2001 passed by the Supreme Court of India in Civil Appeal Nos. 2789-90 of 1997 M/s. Sikkim Subba Associates Vs. State of Sikkim, , the R.F.A. 4 of 2001 has become infructuous as no amount can be claimed by the appellant from the respondent No. 2/applicant and that being the position, the said Bank Guarantee No. JKB/CB-91-32 dated 24th April 1991 is to be duly discharged by the appellant and returned to the respondent No, 1 Bank. According to the learned Counsel for applicant, the said deposits were made by the applicant/respondent No. 2 and the first name of these fixed deposits is that of the respondent No. 2 and the second name is that of one Karan and Co. and in law, the applicant-respondent No. 2 being the first name holder in the said deposits is the only rightful owner of these deposits which have been retained by the respondent No. 1 Bank and the Bank has been renewing the same. According to Mr. A. K. Sarkar, learned Counsel, the respondent No. 1 Bank is colluding with respondent No. 3, Shri Karan Luthra and on the disposal of the appeal, the respondent No. 1 Bank is attempting to pay the securities, deposits mentioned above :along with interest to Karan and Co., the firm of the: respondent No. 3, who is a customer of respondent No. 1 Bank by hook or crook. This collusive action is established by the fact that no response was received by the applicant respondent No, 2 from the end of the respondent No. 1 Bank in connection with the former's letter dated 22nd March, 2000 wherein applicant-respondent No. 2 requested the respondent No, 1 Bank for release of security deposits, Mr. A. K. Sarkar argued. The learned Counsel also contended that the respondent No. 3 was the stockiest of the applicant-respondent No. 2 in relation to the lotteries of the appellant-State and large sums of monies were due to the applicant from the respondent No. 3. Mr. A. K. Sarkar went on to contend that the appellant Court has power and jurisdiction to pass necessary order in order to do complete justice between the parties, though the appeal does not extend to the whole pf the decree by invoking the provision of law laid down u/s 151, C.P.C. read with Order 41, Rule 33, C.P.C. The learned Counsel further contended that through bona fide mistake the respondent No. 2 omitted to mention the related provision

of law laid down under Order 41, Rule 33, C.P.C. in the related application, but, in fact, the said application was filed u/s 151, C.P.C. read with Order 41, Rule 33. Supporting his submission as well as the case of the applicant-respondent No. 2, Mr. A. K. Sarkar, learned Counsel cited the following decisions of the Apex Court and Patna High Court rendered in :--

1. Pannalal Vs. State Bombay and Others,
2. Mahant Dhangir and Another Vs. Madan Mohan and Others,
3. K. Muthuswami Gounder Vs. N. Palaniappa Gounder,
4. Banarsi and Others Vs. Ram Phal, .
5. Mohammad Gulam Rabbani Vs. Bankipore Hari Sabha and Others, .

In reply to the application, the respondent No. 1 Bank also took certain pleas, which run thus :--

"That the Bank Guarantee dated 24-4-1991 was issued by respondent No. 1 Bank and following deposits were received from the respondent No. 3:

- a) Rs. 10 lakhs were received and a Cash Certificate No. 120959 was prepared on 24-4-1991.
- b) Rs. 10 lakhs were received and a Cash Certificate No. 120960 was prepared on 24-4-1991.
- c) Rs. 5 lakhs was received on 7-6-1991 from respondent No. 3 and cash certificate No. 120998 was prepared, "
- d) Rs. 15.00 lakhs was received on 6-1-1992 and an FDR No. 167851 was prepared. Before issue of the Bank Guarantee only Rs. 20 lakhs was taken as margin money. Respondent No. 3 provided the payment of Rs. 20.00 lakhs afterwards as detailed above.

It is stated that these Fixed Deposits were renewed from time to time. However, while making FDRs by a clerical mistake the Fixed Deposits were made in favour of M/s. Sikkim Subba Associates and Karan and Co. These Deposit Receipts were however, never released and issued to any person and were retained by respondent No. 1 being pledged for the Guarantee dated 24-4-1991 issued in favour of the appellant. The originals of Annexures A to A-4 are with the respondent No. 1 being held as a security. The amount of Rs. 40 lakhs was received by respondent No. 1 from respondent No. 3 as under :

- a) Rs. 10 lakhs were received and a Cash Certificate No. 120959 was prepared on 24-4-1991.
- b) Rs. 10 lakhs were received and a Cash Certificate No, 120960 was prepared on 24-4-1991.
- c) Rs. 5 lakhs was received on 7-6-1991 from respondent No. 3 and cash

certificate No; 120998 was prepared;

d) Rs. 15,00 lakhs received on 6-1-1992 and an FDR No. 167851 was prepared. Before issue of the Bank Guarantee only Rs. 20 lakhs was taken as margin money. Respondent No. 3 provided the payment of Rs. 20.00/- lakhs afterwards as detailed above.

As regards para 8 of the Application, it is stated that FDRs were renewed but were not released to any party. It is respectfully submitted that respondent No. 2 has no right to encash the guarantee or to receive the amount due under the FDRs as no amount was paid by the respondent No. 2 for obtaining the Guarantee."

9. At the hearing, Mr. B.R. Narang, learned Counsel appearing for respondent No. 1 Bank contended that no amount could be paid to the respondent No. 2 and apart from that no issues were claimed, or framed in this regard and if the respondent No. 2 has claim to it, he has to file a suit against the respondent-defendant No. 3 and moreover, the respondent No. 1 Bank received no payment from the defendant respondent No. 2 applicant for issue of Bank Guarantee and it was so stated in the cross-examination of D.W. No. 1. It is also contended that the F.D.Rs. were never issued either to the respondent No. 2 or 3 and they were only prepared and kept for the purpose of counting so that proper interest as may be applicable from time to time may be credited to the account of the person who obtained the Bank Guarantee and made deposits and it is the bank practice that any person who obtain an instrument like drafts or F.D.Rs. payable to any person can get them encashed on discharging and returning of the instrument, but the same was delivered to the payee, then the person who obtains the instrument could not get any amount in respect of the same. Supporting the factum of receiving of the Bank Guarantee from the defendant No. 1 Bank by Mr. Karan Luthra, the sole proprietor of M/s, Karan and Co. after depositing 100% margin money and securities, Mr. Narang, learned Counsel has drawn my attention to the related cross-examination portion of the D.W. No. 2, I have perused it. The learned Counsel also contended that when the defendant No. 1 Bank produced the related 8 documents before the trial Court in terms of the related order dated 22nd January 2001 passed by the trial Court on the motion of the defendant No. 2, the learned Counsel for the defendant No. 2 submitted that those documents are of no import for disposal of the suit and accordingly, the learned Counsel does not press the same and this shows that those were/are not relevant for the suit and it is not understood as to how they have become relevant now. Mr. Narang, learned Counsel also argued that no prima facie case has been made out by the applicant-defendant No. 2 for granting the relief sought for in the said application. In support of the case of the respondent No. 1 Bank, the learned Counsel relied upon the following decisions of the Apex Court :--

1. Nain Singh Vs. Koonwarjee and Others, .

2. Mahant Dhangir and Another Vs. Madan Mohan and Others,

3. K. Muthuswami Gounder Vs. N. Palaniappa Gounder, .

10. Almost same and similar pleas taken by the defendant/respondent No. 1, were taken by the respondent No. 3 in his reply to the said application. Mr. B. Sharma, learned Counsel appearing for the respondent No. 3 submitted that he endorsed the submissions advanced by Mr. B.R. Narang, learned Counsel for the respondent No. 1 Bank.

11. Now, this Court is to see and examine as to whether the present application (C.M.A. No. 129 of 2003) is maintainable or not and whether the reliefs sought for by the respondent No. 2, applicant herein, can be granted or not ?

12. For just determination of the real points in controversy between the parties in the present case, particularly, the application filed by the respondent No. 2, applicant herein, it is necessary to highlight the findings and observations of the Apex Court rendered in M/s. Sikkim Subba Associates Vs. State of Sikkim, as the present case is inter related with the said Civil Appeal Nos. 2789-2790 of 1997 decided by the Apex Court on 1st May, 2001. The relevant observations of the Apex Court finds its place in paragraph 18 of the judgment and accordingly, the same is quoted below :--

"18. On behalf of the State of Sikkim, a strong plea has been made in pursuit of its counter-claim by contending, that it is always permissible for the Court to set aside the bad or vitiating part of the award and retain and affirm the vaMd portion, alone and, therefore, the award to that extent may be allowed to stand and the same be made a rule of Court. No doubt this Court in Mattapalli Chelamayya and Another Vs. Mattapalli Venkataratnam and Another, ; The Upper Ganges Valley Electricity Supply Company Ltd. Vs. The U.P. Electricity Board, and Union of India (UOI) Vs. Jain Associates and Another, has held so. The arbitrator has allowed a sum of Rs. 5,39,15,531/- in favour of the State and after adjusting against the same, the sum admittedly due to the appellants, the counter claim to the tune of Rs. 4.61.35.242/- was awarded to them. The various facts adverted to supra would go to show that though the initial default was committed by the appellants, the respondent-State was also not adhering strictly to the time schedule and other stipulations contained in the agreement. The lotteries agreed to be run through the appellants have since been closed, once and for all. Due to certain supervening difficulties said to have been encountered by the appellants, their business adventure did not proceed on the expected lines and it is not also the case of the State that the appellants have made any undue profit or enriched themselves at the expenses of the State. We cannot completely ignore the fact that the initial preparations to float and publicise the scheme of lotteries in question involving considerable expenditure did not bring to them the expected returns, on account of the premature termination of the agency agreement and the encashment and appropriation of the bank guarantees. The appellants could not have reaped the full benefit of those business ventures. There seem to be no

proper rendition of accounts at the proper time and the finalisation came only at a much later stage. Keeping in view all these practicalities and realities of the situation, we are convinced, on the peculiar facts and circumstances of this case, that equities have to be properly worked out between parties to ensure that no one is allowed to have their pound of flesh unjustly against the other. Since this Court has chosen to take up for consideration the merits of the claims of the respective parties in these appeals filed by the appellants, in order to do substantial justice between parties in exercise of its powers under Article 142 of the Constitution of India, we consider it not only appropriate but just and necessary as well, on an overall consideration of the matter, to reject the counter-claim made by the State.?

13. A bare perusal of the above findings of the Apex Court shows that the counter claim made by the State of Sikkim arising out of the alleged breach of agreement dated 22nd January, 1991 between the parties concerned was rejected by the Apex Court and on such rejection of the counter claim, no amount is at all payable by the respondent No. 2 applicant to the appellant State. In view of the above decision, the present R.F.A. No. 4 of 2001 has become infructuous and it is established that the respondent ;No; 2 applicant committed no breach of the said agreement dated 22nd January 1991, It is also a fact that the said agreement dated 22nd January 1991 was made between the appellant-State and the respondent No. 2, applicant herein, for running State lotteries for which the respondent No. 2 has been appointed as Organising Agents.

14. Certain pleadings of the plaintiff-appellant made in the plaint particularly, in paragraph 12 of it and the written statement filed by the respondent No. 1 Bank and respondent/defendant No, 3 in reply to the said paragraph 12 are also relevant at this stage and accordingly, those related pleadings are quoted below :--

"12. That it is likely that the defendant Bank will return the deposits made by M/s. Sikkim Subba Associates and Shri Karan Luthra to them and will release the securities of M/s. Sikkim Subba Associates and Shri Karan Luthra with the defendant Bank in connection with the Bank Guarantee on or after 23-4-1992."

(Para 12 of the Plaint)

"12. That the contents of para 12 are wrong and denied. The allegations made are very strange. The plaintiff is not concerned with the arrangement between the bank and its client and it is the prerogative of the bank to take a decision as to when the securities of its clients have to be released, since the said decision shall be taken by the bank by keeping in mind its own interest." (Para 12 of the written statement of defendant No. 1)

"12. Para 12 of the plaint is denied. Under the guarantee, the defendant No. 1 had pledged its own credit with the plaintiff and whether the security has been furnished by the defendant No. 3 with the defendant No. 1 is absolutely immaterial. In case the amount is to be paid, the Bank has to discharge its

obligations independent of any security held by the defendant No. 1". (Para 12 of the written statement of defendant No. 3).

15. In paragraph 12 of the plaint, there was a specific pleading in the suit and whereas there was no specific averment in the written statement by the respondent Nos. 1 and 3 mentioned above, as to whom these deposits belonged to and who paid for the same. From the letter dated 21st February 2000 of the respondent No. 2 applicant addressed to respondent No. 1 Bank/authority as in Annexure-A5 to the application, it is seen that the respondent No. 2 requested the respondent No. 1 Bank for release of the deposits/securities lying with the Bank and in response to the said letter, the respondent No. 1 Bank instead of raising objection or contesting or stating that the respondent No. 2 applicant is not the owner of the deposits, merely stated in its letter dated 10th March 2000 as in Annexure-A6 to the application, that the Bank can consider the release of security or otherwise in favour of rightful claimant(s) only after the original Bank Guarantee No. JKB/CB/ 91-32 dated 24th April 1991 duly discharged by the beneficiary is returned to the Bank. In view of the above position, it is a factual situation prior to the filing of the present. application that the respondent No. 1 Bank never specifically pleaded that the said deposits are not the ownership of the respondent No. 2 applicant and were made from the monies deposited by the respondent No. 3. It is also the case of the respondent No. 1 Bank that the related appeal R.F.A. No. 4 of 2001 is liable to be rejected in view of the order dated 1st May 2001 passed by the Apex Court.

16. It appears to me that both the respondent No. 1 Bank and respondent No. 3 have taken a consistent stand in response to the present application filed by the respondent No. 2, applicant herein, inasmuch as the same and similar identical language and terms and pleadings of both the respondent No. .1 Bank and respondent No. 3 for the first time specifically stated that it is the respondent No. 3 who has paid for the said deposits. With regards to the first name of the respondent No. 2 applicant on the said deposits, for the first time both the respondents in the same breath stated that it was a clerical mistake. I am not. Inclined to agree with this statement as the said deposits have been renewed from time to time and every renewal, the name of the respondent No. 2 is mentioned as the first name which is evident from the last renewal as seen in the related documents appended to the application as discussed above. I am also of the view that the statements of the respondent Nos. 1 and 3 about the clerical mistake appears to be an after-thought and unsustainable in case or in law and the respondent No. 1 is in some sort of understanding with the respondent. No. 3 which borders on collusion as it is taking pains to defend the defendant/ respondent: No. 3 and consistently plead its case both in the replies filed by them to the application as well as in the arguments advanced by the learned Counsel appearing for the respondent: Nos. 1 and 3. Indeed it is interesting to know the statement of the defendant No. 1 Bank that they shall not make the payment of the deposits of the person whose names appear on the said deposits but would make the said payments to the person who they consider having paid

for these deposits i.e. the deposits as mentioned in the paragraph 7 of the application which are/were renewed from time to time; and it is not understood as to how the present officers/authority of the respondent No. 1 Bank would know as to who paid for these deposits. According to me, under the banking law the Bank has to only recognize the person whose name appears on the related deposit(s) and in case of dispute and the deposit(s) being in the joint names, the first name holder of the deposit(s) would be entitled in law to receive the monies under such deposit(s) and the ownership can be gathered from the related documents and the Bank is not obliged in law to trace the source of funds. In a given case "X" takes a deposit in the name of "Y" and on maturity of the said deposit, the Bank would have to pay "Y" the maturity value and cannot entertain the claim of "X" in respect of such deposit, even if the said deposit is purchased by "X" from its own funds. Likewise, in case of shares, debentures etc., it is only the owner/holder whose name is recorded in the shares , debentures etc. and in case of joint ownership, the first name holder in whose name the dividend, interest etc. is paid and the company is not concerned as to who paid for the purchase of the shares, debentures | etc. Therefore, in my considered view, there is no need for evidence to be laid or issue to be framed in respect of the present matter inasmuch as admittedly, the first name "in these deposits in question is that of the respondent No. 2 applicant and it is the respondent No. 2 applicant who is entitled to receive the sums pertaining to these deposits and in case, if the respondent No. 3 has right in law in respect of any money payable by the respondent No. 2 applicant to him, then in that case, the respondent No. 3 is at liberty to take up appropriate legal proceedings according to law, if so advised. In view of the above position, I am in agreement with the submissions of the learned Counsel for the respondent No. 2 applicant that respondent Nos. 1 and 3 are in some sort of collusion in view of the stand taken by them in replies now filed and the same appears to be after-thought and unsubstantiated. Even assuming that the respondent No. 3 has paid for such deposits, in my view, the fact that the first name in these deposits is that of the respondent No. 2 applicant, who would entitle to claim these deposits with interest as in law as the respondent. No. 2/applicant is the owner and rightful claimant of it.

17. The arguments of the learned Counsel appearing for the respondent Nos. 1 and 3 that this Court cannot decide disputes inter se respondents in an appeal pending before it is devoid of merit for the following reasons :--

Order 41, Rule 33 of the CPC provides the power of the Court of appeal and the said Rule 33 is quoted below :

"33. Power of Court of Appeal.

The Appellate Court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make, such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although

such respondents or parties may not have filed any appeal or objection, [and may, where there have been decrees in cross suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees]."

In Pannalal Vs. State Bombay and Others, , the Apex Court held that the Appellate Court can give relief to a respondent as against other respondents. Paragraph 12 of the said judgment is relevant in the instant case and accordingly, the same is quoted below :---

"(12) Even a bare reading of Order 41, Rule 33 is sufficient to convince any one that the wide wording, was intended to empower the appellate Court to make whatever order it thinks fit, not only as between the appellant and the respondent but also as between a respondent and a respondent. It empowers the appellate Court not only to give or refuse relief to the appellant by allowing or dismissing the appeal but also to give such other relief to any of the respondents as "the case may require."...

It is well settled that the appellate Court can take notice and subsequent events to shorten litigation to preserve rights of both the parties and to subserve the ends of justice.

In Koksingh Vs. Smt. Deokabai, , the Apex Court held that High Court is competent to pass a decree for the enforcement of a charge in favour of the respondent notwithstanding the fact that the respondent did not file any appeal from the decree and the appellate Court is empowered to grant relief in favour of the party concerned. The paragraphs 5 and 6 of the judgment is relevant and accordingly, it is also quoted below :--

"5. In Radhika Mohan Munshi Vs. Sudhir Chandra Sanyal and Others, , the facts were these : Under an annuity bond, the plaintiff there was granted a certain allowance per month. In a will executed by the executor of the annuity bond, it was provided that the annuity was to be a charge on certain properties. As the annuity allowance fell in arrears, the plaintiff brought a suit to enforce it praying for a charge. The trial Court decreed the suit but did not grant a charge. The lower appellate Court exonerated the defendants from personal liability but held that there should be a charge on the property. In second appeal by the defendants it was contended by them that the lower appellate Court could not create a charge as in the lower appellate Court the plaintiff had failed to take objection to that part of the trial Court's decree. The High Court held that under Order 41, Rule 33, Civil P. C., the lower appellate Court was competent to vary the decree by providing for enforcement of the charge and that the decree passed by it was right.

6. In Giasi Ram and Others Vs. Ramjilal and Others, the Court said that, in Order 41, Rule 33, the expression "which ought to have been passed" means . "what ought in law to have been passed" and If an appellate Court is of the view that any decree which ought in law to have been passed was in fact not passed by the

Court below, it may pass or make such further or other decree or order as the justice of the case may require."

In *K. Muthuswarni Gounder v. N. Palaniappa Gounder* reported in AIR 1993 SC 3118, the Apex Court held that in exceptional cases and in a fit case, the appellate Court by invoking the provision of Order 41, Rule 33, C.P.C. can pass such decree or order as ought to have been passed even if such decree would in favour of parties who have not filed any appeal and such power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals. The relevant observation made by the Apex Court in the said case finds its place in paragraph 12 of the judgment which is quoted below :---

"12. Order XLI, Rule 33, enables the appellate Court to pass any decree or order which ought to have been made and to make such further order or decree as the case may be in favour of all or any of the parties even though (i) the appeal is as to part only of the decree, and (ii) such party or parties may not have filed an appeal. The necessary condition for exercising the power under the Rule is that the parties to the proceeding are before the Court and the question raised properly arises out of the judgment of the lower Court and in that event the appellate Court could consider any objection to any part of the order or decree of the Court and set it right. We are fortified in this view by the decision of this Court in *Mahant Dhangir and Another Vs. Madan Mohan and Others*, . No hard and fast rule can be laid down as to the circumstances under which the power can be exercised under Order XLI, Rule 33, C.P.C. and each case must depend upon its own facts. The rule enables the appellate Court to pass any order/decreet which ought to have been passed. The general principle is that a decree is binding on the parties to it until it is set aside in appropriate proceedings, ordinarily the appellate Court must not vary or reverse a decree/order in favour of a party who has not preferred any appeal and this rule holds good notwithstanding Order XLI, Rule 33, C.P.C. However, in exceptional cases the rule enables the appellate Court to pass such decree or order as ought to have been passed even if such decree would be in favour of the parties who have not filed any appeal. The power though discretionary should not be declined to be exercised merely on the ground that the party has not filed any appeals...."

So far as the case laws cited by the learned Counsel appearing for the respondent Nos. 1 and 3 do not help the case of these respondents inasmuch as it is well settled that the Court cannot make the use of Section 151, C.P.C. where a party had his remedy provided elsewhere in the Code and he neglected to avail himself of the same and the only constraint of the appellate Court under Order 41, Rule 33, C.P.C. are that; (i) the parties before the lower Court should be there before the appellate Court and (ii) the question raised must properly arise out of judgment of the lower Court and if these two requirements are there, the appellate Court would consider any objection caused any part of the judgment or decree of the lower Court and it may be urged by any party to the

appeal. In the case in hand, the above requirements are fulfilled as all the materials and evidence rather related findings are available in the impugned judgment and decree of the trial Court.

18. From the available materials on record, it is seen that the related Bank Guarantee was executed for a particular purpose, i.e. if M/s. Sikkim Subba Associates failed to honour agreement dated 22nd January, 1991 with the Government of Sikkim and not M/s. Sikkim Subba Associates Karan & Co., 14-15F, Connaught Place, New Delhi, in connection with the running of the related State weekly lotteries and the defendant No. 1 Bank very well knew of it and such guarantee was for that purpose and in that agreement. Karan and Co., the respondent No. 3 was not a party. The defendant No. 2/applicant in paragraph 12 of the reply on merits column of the written statement specifically stated that the plaintiff-appellant has no right to stop or restrain the answering defendant, i.e., respondent No. 2 from releasing its dues from the defendant No. 1 Bank in accordance with law. The defendant No. 3 in his written statement stated that the suit is filed on the basis of a Bank Guarantee, wherein the defendant No. 1 Bank has pledged its credit to the plaintiff and the plaintiff has accepted the guarantee of the Bank and there is no contract between the plaintiff and the defendant No. 3 and there being no privity of contract between the two, the suit for recovery of guarantee amount and also for injunction is not maintainable and is liable to be dismissed with costs. In paragraph 12 of the written statement of the defendant No. 3, the defendant No. 3 admitted that under the guarantee the defendant No. 1 Bank had pledged its own credit with the plaintiff appellant and whether the security has been furnished by the defendant No. 3 with the defendant No. 1 Bank is absolutely immaterial.

19. From the impugned judgment and decree dated 15th Feb. 2001 passed by the trial Court in Civil Suit No. 21 of 1994, it appears that the present dispute involved in the suit has been decided by the learned Arbitrator vide, its award dated 8th Feb. 1994, in other words, the related issue was dealt with and decided in the arbitration proceedings. The relevant observation of the learned trial Court on the related Issue No. 7 is important: and accordingly, it is quoted below :--

"ISSUE NO. 7

Whether the present suit has become infructuous as the present dispute has been decided by the Arbitrator vide its award dated 8-2-1994?

Learned counsel for the plaintiff argued that the conduct of the defendant No. 2 in not filing the Arbitration Award proves that no such adjustment had been made in the Arbitration proceedings. It is to be noted here that the plaintiff through P.W. 1 has clearly conceded that the subject matter of the present suit, i.e. the amount of the Bank Guarantee Exbt. P2 has already been dealt with in an Arbitration proceedings between the plaintiff and the defendant No. 2. Thus in view of such clear admission by the plaintiff itself, it is hardly necessary to insist

on any documentary evidence or otherwise in order to come to a finding that the subject matter of this suit was dealt with in an Arbitration proceedings between the plaintiff and the defendant No. 2. Thus it is seen that at the instance of defendant No. 2 an Arbitrator was appointed and the learned Arbitrator gave award and the said award was decreed by this Court and further that the same matter is pending before the Hon'ble Supreme Court of India. Therefore, by admission of the plaintiff, itself the suit was dealt with and decided in the Arbitration proceeding. Thus this Issue also stands decided against the plaintiff."

The Apex Court made an overall consideration of the matter and rejected the counter-claim made by the plaintiff/appellant-State as seen in the related judgment rendered in M/s. Sikkim Subba Associates Vs. State of Sikkim, as highlighted above. It is also made clear that the subject matter of the present suit, i.e. the amount of the Bank Guarantee (Exhibit P2) has already been dealt with in a arbitration proceedings between the plaintiff/appellant State and the defendant No. 2, applicant herein. It is also further made clear that the said decision of the Apex Court cover up the related issues involved in the present suit/ case and the issue pertaining to the disputed Bank Guarantee and the related F.D.Rs. had been finally settled. In other term, the Bank Guarantee was issued/ made by the defendant No. 1 Bank in connection with the said lottery business where the State Government appointed the respondent No. 2 as Organising Agents for its lotteries. Therefore, in my considered view, all the main issues involved in the instant case including the claim and the reliefs sought for by the present applicant had already been settled finally by the Arbitrator, trial Court as well as the Apex Court to and in favour of the M/s. Sikkim Subba Associates, the defendant No. 2, applicant herein, even though there is /was a claim and counter claim pertaining to the issues as to whether the Bank Guarantee was issued by the defendant No. 1 Bank either in favour of M/s. Sikkim Subba Associates Karan and Co. or M/s. Sikkim Subba Associates and Co. etc.etc. It is also seen that the respondent No. 1 Bank or the respondent No. 3 did not prefer any appeal as against the impugned judgment and decree dated 15th February, 2001 passed by the learned trial Court and apart from that the respondent No. 3 did not make a prayer for receiving the amount due under the guarantee as on today. In my considered view, the respondent No. 2, applicant herein is the rightful claimant of these deposits and no other persons like respondent No. 1 or respondent No. 3.

20. For the reasons and observations made above I am of the view that the guarantee has to be discharged, the security has to be released and the sum cannot in any event , be kept with the respondent No. 1 Bank. I am also of the view that no prejudice or loss shall be caused to the respondent No. 1 Bank when the guarantee, in question, has to be discharged and the security has to be released in favour of the defendant/respondent No. 2 applicant. In view of the above position, the application is allowed and the reliefs sought for by the respondent No. 2/applicant in the present application is accepted. Accordingly, I direct the respondent No. 1 Bank to release the said amounts of the deposits as

highlighted above and also mentioned in paragraph 7 of the application with up to date bank interest (prescribed rate of interest of the Bank) on it within a period of 2 (two) weeks from the date of this judgment/order to and in favour of the respondent No. 2/applicant as the said respondent No. 2/applicant is the first name holder of the F.D.Rs. It is also made clear that if the respondent No. 3 has claim or right in respect of any monies payable by the respondent: No. 2/applicant to him, then in that case, the respondent No. 3 is at liberty to file appropriate proceedings in accordance with law, if so advised and, it is further made clear that the respondent No. 1 Bank shall not be held responsible for any liabilities in the matter if the respondent No. 1 Bank release the amounts of the related deposits along with prescribed rate of interest of the Bank as directed and mentioned above to and in favour of the respondent No. 2/applicant with in the stipulated period mentioned above. Accordingly, C.M.A. No. 129 of 2003 is finally disposed of along with the R.F.A. No. 4 of 2001 but, no order as to costs.