Ve Commercial Vs. the Assistant

Ve Commercial Vs. the Assistant

SooperKanoon Citation : sooperkanoon.com/2072

Court : Chennai

Decided On : Dec-09-2014

Judge : T.S.Sivagnanam

Appellant : Ve Commercial

Respondent : The Assistant

Judgement :

IN THE HIGH COURT OF JUDICATURE AT MADRAS DATED:26.06.2009 Coram The Hon'ble Mrs.Justice ARUNA JAGADEESAN C.S.NO.1542 OF1988 Asian Paints (India) Ltd.Plaintiff (Amended as per the Appln.

No.613/2001 Order dated 09.02.2001 and also delay condoned in Appn.

No.4551/2002 Order dated 07.11.2002) versus 1.The Official Liquidator of High Court Andhra Pradesh, Hyderabad.

Liquidator of Vaishu Engineering Industries Ltd., Secunderabad (Amended as per Order dated 27.11.2002 in Appln.No.4919 of 2002) 2.State Bank of India Bible House Branch Secunderabad 3.Defendants Suit filed under Order IV Rule 1 of Original Side Rules read with Order VII Rule 1 of Code of Civil Procedure prays for a decree and judgment against the defendants (a) for Rs.27,56,719/- in the following manner: (i) for a sum of Rs.15,00,000/- with further interest at 21% p.a.on Rs.15,00,000/- from date of plaint till realisation jointly and severally against the defendants No.1 and 2, (ii) for a sum of Rs.12,56,719/- with further interest at

21% p.a.on Rs.12,56,719/- from date of plaint till realisation from the fiRs.defendant and (b) for costs of the suit.

For Plaintiff .Mr.M.Vijayan for King and Patridge For D-2 .Mr.P.Sukumar

JUDGMENT

The suit is filed praying for recovery for a sum of Rs,21,56,719/- including joint liability of Defendants 1 and 2 for Rs.15,00,000/- and further towards the liability of the fiRs.defendant for a sum of Rs.12,56,719/- with interest 21% per annum and for the costs of the suit.

2.The plaintiff's case is briefly stated below: The plaintiff had placed a Purchase Order No.1007 dated 05.12.1985 under Ex.P-2 with the fiRs.defendant for the supply, erection and commissioning of 2 Nos.7 Ton Boilers along with 2 Nos.Super Heaters at the total cost of Rs.52,00,000/-.

It was specifically agreed that the price quoted for the aforesaid order was firm and was not subject to any escalation whatsoever.

The entire supply, erection and commissioning of the equipment was to be completed before 30.06.1986 by the fiRs.defendant.

The contract provided for the payment of penalty at the rate of half percent per week subject to a maximum of 5% of the total value of the order for any delay.

3.Pursuant to the order, the plaintiff paid an initial advance of Rs.7,80,000/- to the fiRs.defendant and had been making payments pursuant to the aforesaid order from time to time.

Since the fiRs.defendant had some difficulty to perform their part of contract had requested the plaintiff to help them in purchasing the raw-materials and components by making direct payment to the third parties on whom orders were released by the fiRs.defendant.

The fiRs.defendant promised and undertook to reimbuRs.excess payments made over and above the contract price and requested the plaintiff to debit their account with respect to the payments made by it to the suppliers / third parties on their behalf.

In order to execute the order expeditiously and to prevent the consequent delay in the plaintiff's commercial production, advances were made based on the understanding that all the excess payments would be refunded by the fiRs.defendant.

In the couRs.of said transaction, the plaintiff insisted the fiRs.defendant to furnish the Bank Guarantee for an excess payment roughly estimated for a sum of Rs.15,00,000/- at the relevant point of time.

In response, the fiRs.defendant vide letter dated 24.09.1986 under Ex.P-3 requested the plaintiff to make arrangement for payment of customs duty for the clearance of imported components which was considered by the plaintiff and accordingly advanced a sum of Rs.21.14 lakhs towards customs duty.

4.The payments made by the plaintiff at the request of the fiRs.defendant in the above manner exceeded the contract price and pursuant to the understanding, the fiRs.defendant furnished the Bank Guarantee No.45 of 1986 dated 31.12.1986 issued by the State Bank of India, Secunderabad the second defendant herein for a sum of Rs.15,00,000/-.

The Bank Guarantee covered from the period from 31.12.1986 to 28.02.1987 under Ex.P-4.

The Annexure to the aforesaid Bank Guarantee specifically stated that the said Bank Guarantee was issued for the due performance of the contract by the fiRs.defendant and also to refund the excess money made over and above the contract value.

It further provided that the Bank Guarantee shall remain in force until 28.02.1987, unless a claim against the contractual obligations / refund of excess money paid over and above the contract value is preferred within two months from the expiry of the Bank Guarantee i.e.on 28.02.1987 and thereafter the Bank shall be relieved and discharges from all liabilities thereon.

5.Since the contractual obligation of the fiRs.defendant was not fulfilled, the plaintiff was constrained to seek further extension of Bank Guarantee No.45 of 1986 for a further period of six months i.e.from 28.02.1987 to 28.08.1987.

The second defendant on the instructions of the fiRs.defendant renewed the Bank Guarantee from the period of 28.02.1987 to 28.08.1987 vide extension letter dated 05.06.1987 under Ex.P-5.

It was clearly mentioned in the said letter that all other terms and conditions as appearing in the original Bank Guarantee shall apply for the extended period and it shall be read with the original Bank Guarantee.

Thereafter, the original Bank Guarantee was further extended from 28.08.1987 to 28.11.1987 vide extension letter dated 02.09.1987 under Ex.P-6 and all other terms and conditions in the original Bank Guarantee applied to this further extension also.

6.As per the understanding and in pursuant to the request made by the fiRs.defendant, the plaintiff made payments to the third party suppliers and debit the fiRs.defendant's account and also forwarded the copies of the bills / invoices in original on the payments made to the third party suppliers to the fiRs.defendant vide letter dated 05.09.1987 under Ex.P-7.

The same was received and acknowledged by the fiRs.defendant on the same date.

Considering the excess payments made by the plaintiff and at the request of the plaintiff, the fiRs.defendant vide letter dated 07.09.1987 under Ex.P-8 undertook to extend the Bank Guarantee by another three months i.e.from 28.11.1987 and further agreed to provide a fresh Bank Guarantee for excess payments over and above the contract price made by the plaintiff.

Under Ex.P-9 by their letter dated 02.11.1987 requested the fiRs.defendant for terms of the letter of undertaking.

7.The fiRs.defendant came forward and undertook to extend the Bank Guarantee No.45 of 1986 and further undertook to provide a fresh Bank Guarantee for a sum of Rs.9.56 lakhs and also undertook to provide towards the performance of the fiRs.two boilers to the extent of 10% of the order in their letter dated 17.11.1987 marked as Ex.P-10.

Inspite of the fiRs.defendant's undertaking, the fiRs.defendant committed breach of their undertaking and therefore, the plaintiff was forced to invoke the Bank Guarantee No.45 of 1986 and accordingly under Ex.P-11 by its letter dated 28.11.1987 invoked the Bank Guarantee issued by the second defendant requesting Bank concern to pay the money under the Bank Guarantee in view of non compliance of the contract by the fiRs.defendant.

Since the second defendant did not comply with the request of the plaintiff the latter had to remind the second defendant to honour their commitments by letter dated 20.01.1988 marked as Ex.P-12, 21.01.1988 under Ex.P-13 and 17.02.1988 under Ex.P-14.

Since the second defendant failed to honour their commitment, the plaintiff caused an issuance of legal notice to the second defendant under Ex.P-15 dated 04.03.1988 calling upon the second defendant to honour their commitments, to which the second defendant sent a reply through its lawyer under Ex.P-16 dated 09.03.1988 denying their liability.

The plaintiff also caused an issuance of legal notice to the fiRs.defendant under Ex.P-17 dated 08.04.1988 calling upon the fiRs.defendant to pay the plaintiff for a sum of Rs.27,56,718.52, to which the fiRs.defendant sent a telax message under Ex.P-18 dated 30.04.1988 denying the allegations made in the legal notice and informing the plaintiff that their solicitors will shortly reply to the notice however no reply was forthcoming.

8.Therefore, the plaintiff filed the suit against the defendants 1 and 2 for recovery of money as stated above.

9.The averments made in the written statement of the fiRs.defendant is as follows: i.The placements of Purchase Order was placed by the plaintiff with the fiRs.defendant for the purchase of 2 Nos.7 Ton Boilers along with the other accessories and machineries for a total price of Rs.52,00,000/- was admitted.

But it would state that as on the date of the placing of the order namely 05.12.1985 the price was quoted by the fiRs.defendant on the basis of the prices of the materials available in India and in abroad at that point of time.

But when the defendant started manufacturing the said boilers there were several changes in foreign exchange which led to steep increase in steel price in India and therefore by letter dated 24.09.1986, the fiRs.defendant explained to the plaintiff regarding the escalation of price went upto 50% due to devaluation in the Foreign Indian Currency in terms of Danish Kroner which resulted in the high cost of imported materials and consequential increase in the import duty.

ii.Again telex message on 10.11.1986, this defendant gave a detailed message to the plaintiff explaining how the price of the boilers ordered will cost about Rs.98.7 lakhs.

Since the customs duty of importing machieneries from abroad increased and also due to escalation of price of materials required for assembling the boiler went up once again with a steep increase the price of the other materials also got doubled and therefore this defendant explained to the plaintiff that price of the two numbers of boilers supplied will be about Rs.1,33,72,000/-.

Since the plaintiff informed the fiRs.defendant that they would consider about the paying the increased amount, due the cordial relationship it had with the plaintiff and also since it had already commenced manufacturing boilers the fiRs.defendant proceeded further despatching and commissioning of the boilers without getting anything in writing from the plaintiff that they would pay the cost of the machineries as per the increased price.

Though the fiRs.defendant initially agreed to supply the two boilers for a total consideration of Rs.52,00,000/- that was not the final price as agreed between the parties and that would be evident from further correspondence, letteRs.telex messages and personal discussion made between the parties that the initial price fixed by the fiRs.defendant was not the final one.

It is only at the request of the plaintiff the delivery date of the boiler were extended to March 1987.

The payments made by the plaintiff after 30.06.1986 will clearly prove that the original terms and conditions on which boilers are to be supplied were given a go bye and not acted upon.

Therefore, the plaintiff cannot insist the fiRs.defendant to abide by the terms and price as mentioned originally in the letter dated 05.12.1985.

iii.The very fact that the plaintiff has paid more than the agreed price will clearly prove that the plaintiff has accepted to this defendant to pay the increased price.

They have agreed to pay the increased price and having received the boileRs.the plaintiff is now trying to get more money from the defendant by way of refund which is against the principles of natural justice and equities especially when the fiRs.defendant has incurred a very heavy loss.

Though this defendant requested the plaintiff through several letters to send statement of accounts and other connected documents on 09.03.1987, 03.06.1987 and 05.06.1987 respectively, the plaintiff failed to comply with the request but was insisting this defendant to extend the Bank Guarantee failing which threatening it with dire consequences.

Inspite of all the above things due to pressure given by the plaintiff once again this defendant extended the Bank Guarantee from 28.08.1987 to 28.11.1987.

The plaintiff requested this defendant once again to extend the Bank Guarantee for which this defendant refused to do so which has resulted in filing of this suit.

iv.The Bank Guarantee cannot be invoked as it expired on 28.11.1987.

Since the defendant had incurred an expenditure for a sum of Rs.1.67crore it cannot be extended to supply boilers without any profit and the same has to be determined.

The plaintiff is not entitled any amount as this defendant as refund the excess money over and above of the contract as contract value had increased to Rs.1.67crores this defendant is not liable to pay the amount as prayed for by the plaintiff.

10.The case of the second defendant is as follows: i.This defendant issued a Bank Guarantee No.45 of 1986 at the request of the fiRs.defendant in favour of the plaintiff for a sum of Rs.15,00,000/- dated 31.12.1986 it was initially valid till 28.02.1987 and on being informed by a written demand served on the defendant Bank on or before 28.02.1987 the guarantee was extended upto 28.08.1987 and then upto 28.11.1987 on the request of the fiRs.defendant and the last date for which the receipt of the claim was 28.11.1987.

The plaintiff wrote a letter dated 28.11.1987 to this defendant stating that the fiRs.defendant had not complied the commission of the two boilers and also not extended the Bank Guarantee and hence they were invoking the Bank Guarantee the said claim was received by this Bank on 30.11.1987.

The said letter of invocation of Bank Guarantee by the plaintiff is Ex.P-11 since the said claim was received after the expiry of the date for allotment of complaint i.e.on 28.11.1987 this defendant could not honour the Bank Guarantee.

The plaintiff sent letters dated 20.01.1988 and legal notice dated 04.03.1988 informing the Bank that the claim could be made within two months from the last date i.e.on 28.11.1987 as per the terms of the original Bank Guarantee dated 31.12.1986.

The terms contained in the original Guarantee that the plaintiff was entitled to invoke the same within a period of two months will apply only to the Guarantee dated 31.12.1986 and the same will not apply to the Guarantee which was extended on 02.09.1987 upto 28.11.1987.

Therefore, the plaintiff is not entitled to the suit claim and the suit is liable to be dismissed.

11.Issues framed for determination: i.Whether the plaintiff is entitled to suit claim with interest as claimed in the plaint?.

ii.Whether the suit is barred by limitation?.

Iii.Whether the fiRs.defendant has committed breach of contract?.

iv.Whether the plaintiff has made excess payment over and above the contract price?.

v.Whether the contract price is firm or is subjected to any escalation?.

vi.Whether the plaintiff is entitled to recover the excess payment and the payments made to third parties on behalf of the fiRs.defendant?.

Vii.Whether there was any understanding between the parties for payments made by the plaintiff to the third parties on behalf of the fiRs.defendant?.

Viii.Whether the second defendant is liable to pay any amount under the Bank Guarantee?.

ix.Whether the plaintiff invoked Bank Guarantee after expiry of the period as alleged by the second defendant?.

x.To what relief?.

12.Issue Nos.i, ii, iii, iv, v, vi and vii The fiRs.defendant remind absent and he was set exparte on 28.03.2008.

There is no dispute that the plaintiff company which was originally Pentasia Chemicals Limited later named as Asian Paint (I) Ltd., placed a purchase order under Ex.P-2 for the supply, erection and commissioning of 2 Nos.7 Ron Boilers along with 2 Nos.Super Heaters at the total cost of Rs.52,00,000/-.

It is the case of the plaintiff that since the fiRs.defendant was unable to perform their part of the contract in view of increase of price of raw-materials and components it had requested the plaintiff to make direct payment to third parties on whom orders were released by the fiRs.defendant and further the fiRs.defendant undertook to reimbuRs.excess payment made over and above the contract price and agreed to debit their account with respect to the payments made by the plaintiff to the suppliers / third parties directly.

Admittedly, the plaintiff has made payments more and above the contract price as requested by the fiRs.defendant.

Ex.P.-2 purchase order is more specific that the cost price of Rs.52,00,000/- is inclusive of design, manufacture, supply, packing and forwarding, freight, transit insurance, erection and commissioning and all applicable taxes.

There is no material or evidence to show that the plaintiff agreed to pay the increased price.

In fact under Ex.P-3 letter dated 24.09.1986, the fiRs.defendant has requested the plaintiff for payment of Rs.20,00,000/- towards customs duty and has agreed for including this amount in the cash flow requirements as agreed into between the parties.

Despite the fact that the cost price of Rs.52,00,000/- includes the customs duty payable by the fiRs.defendant since the fiRs.defendant could not clear the documents from State Bank of India and the materials were excepted to reach Bombay from Denmark on 01.11.1986, the plaintiff had to make the payment of Rs.20,00,000/-.

Ex.P-4 is the original Bank Guarantee given by the second defendant on the instructions of the fiRs.defendant and the Annexure to the Bank Guarantee reads that the same is given as security in view of the advance of Rs.15,00,000/- as requested by the contractor and further the fiRs.defendant / contractor had agreed that he would refund the excess money received over and above the contract value immediately after the completion of the erection and commissioning of the boiler within the fiRs.expiry date of the Bank Guarantee.

The fiRs.Bank Guarantee had been executed on 31.12.1986.

If really there was an understanding between the plaintiff and the fiRs.defendant to increase the price of the boilers due to the escalation of prices, then the fiRs.defendant would not have agreed to refund the excess money paid over and above the contract value while giving the Bank Guarantee under Ex.P-4.

The subsequent communication between the plaintiff and the fiRs.defendant did not spell about the alleged undertaking given by the plaintiff towards the increase of price as claimed by the fiRs.defendant.

In fact under Ex.P-7 dated 05.09.1987, the plaintiff has forwarded the copies of the bills to be debited to the account of the fiRs.defendant towards the money paid by the plaintiff to third parties for purchase of materials as requested by the fiRs.defendant.

Even after this letter there is no communication from the fiRs.defendant requesting or making the plaintiff liable for the escalated price or disagreeing with the original contract made for a sum of Rs.52,00,000/-.

In fact the fiRs.defendant has agreed to extend the Bank Guarantee which was already given to the plaintiff by another three months and had further agreed to provide a fresh Bank Guarantee for the payments made against the fiRs.two boilers within 60 days time.

If the plea of the fiRs.defendant that the plaintiff agreed to pay the increased price, then there was no necessity that the fiRs.defendant to agree to provide a fresh Bank Guarantee for the payments made over and above the contract value.

The Chief Executive of M/s.Resins & Plastics Ltd., Mumbai, an associated company of the plaintiff was examined as PW-1 and he has reiterated the averments made in the plaint in his proof affidavit.

Though the fiRs.defendant filed the written statement, but subsequently it remained absent and it was set exparte on 28.03.2008.

So the evidence led by the plaintiff remain uncontraverted and unchallenged.

There is absolutely no evidence either oral or documentary on the side of the fiRs.defendant to prove that the plaintiff had agreed for the increased price taking into consideration the escalated price of materials required for assembling the boiler.

The issuance of the Bank Guarantee and further communication between the parties clearly prove that the cost price fixed for the two boilers was only Rs.52,00,000/-.

After the contract at the request of the fiRs.defendant the plaintiff has continued to pay the excess payment more and above the cost price which was agreed to be refunded by the fiRs.defendant, for which, the Bank Guarantee was also given.

It is the specific case of the plaintiff that the fiRs.defendant failed to perform the contractual obligations and therefore, it was forced to invoke the Bank Guarantee by letter dated 28.11.1987.

The second defendant refused to honour the payments which had led to the issuance of communications from the plaintiff dated 20.01.1988, 21.01.1988 and again on 17.02.1988 reminding the second defendant to honour the commitment.

Since the second defendant failed to comply with the request, plaintiff has issued a legal notice and thereafter, he has filed the suit on 04.03.1991.

Since the suit is filed within a period of limitation, I hold it is not barred by limitation.

In view of the discussion made above, I hold that the plaintiff had made excess payment over and above the contract price fixed between the parties and since the fiRs.defendant committed breach in making payment, the plaintiff is entitled to recover the excess payment made to third parties on behalf of the fiRs.defendant.

Therefore, the plaintiff is entitled to recover the suit claim with interest at 21% per annum from the fiRs.defendant.

13.Issue Nos.viii and ix The second defendant Bank had undertaken to pay to the plaintiff an amount not exceeding Rs.15,00,000/- for due performance of the aforesaid contract by the fiRs.defendant and refund of the excess money paid over and above the contract value.

Ex.P-4 is the fiRs.Bank Guarantee given on 31.12.1986 which is for the period 31.12.1986 to 28.02.1987.

The Bank Guarantee stipulated that it shall remain in force until 28.02.1987 unless a claim against non fulfillment of the contractual obligations / refund of excess money paid over and above the contract value is preferred within two months from the expiry date of the Bank Guarantee i.e.on 28.02.1987.

A perusal of the above terms and conditions of Ex.P-4 Bank Guarantee shows that though the expiry period of the Guarantee is 28.02.1987 but it stipulated that if the contractual obligations or the refund of excess money paid over and above the contract value is not fulfilled or made, then the plaintiff was given two months time to enable the plaintiff to make a claim for the above non fulfillment of the contractual obligations.

The crucial words in the Bank Guarantee is as follows: "We, the State Bank of India, Bible House Branch, Rashtrapathi Road, Secunderabad 500 003, lastly undertake not to revoke this Guarantee during its currency except with the previous consent of the Purchaser in writing and that this Guarantee shall be returned to us for cancellation on expiry.

Notwithstanding anything contained in the foregoing our liability under this Guarantee is restricted to Rs.15,00,000/- (Rupees Fifteen Lakhs Only).our Guarantee shall remain in force until the 28th February, 1987 and unless a claim against non-fulfillment of the contractual obligations / refund of excess monies paid over and above the contract value is preferred within two months from the expiry date of the Bank Guarantee i.e.28th February, 1987, we shall be relieved and discharged from all liabilities thereunder."

As the contractual obligations of the fiRs.defendant was not fulfilled the second defendant on the instructions of the fiRs.defendant had renewed the Bank Guarantee for a further period from 28.02.1987 to 28.08.1987 vide extension letter dated 05.06.1987 under Ex.P-5.

It is clearly mentioned in the extension letter to the Original Bank Guarantee that all other terms and conditions as appearing in the original Bank Guarantee shall apply with the said letter and it shall be read with the original Bank Guarantee.

The relevant portion under Ex.P-5 is as follows: "All other terms and conditions as appearing in the original Guarantee shall apply to this Extension Guarantee and it shall be read with the original Guarantee" The above said words clearly show the intention of the second defendant to apply the terms and conditions stated in the original Bank Guarantee to the extended guarantee also, otherwise there is no need to have this clause in the extended guarantee.

As it is expressly stated in the terms and conditions that the Guarantee was to remain in force unless a claim against non fulfillment of the contractual obligations / refund of excess money paid over and above the contract value is preferred within two months from the expiry date of the Bank Guarantee, it is understood that the plaintiff is given the concession of two months to make his claim in case if the fiRs.defendant failed to fulfill the contractual obligations.

It is not disputed that the contractual obligations could not be fulfilled by the fiRs.defendant and the fiRs.defendant has instructed the second defendant to extend the Bank Guarantee twice.

Even in Ex.P-5 and P-6 it is clearly mentioned that the original terms and conditions in the original Bank Guarantee shall apply to the extended Guarantee also.

Under Ex.P-6, the renewal period is from 28.08.1987 to 28.11.1987.

It leaves no doubt that the terms and conditions as applied to the original guarantee has to be applied to the extended guarantee also and it should be read with the original guarantee.

In fact, the fiRs.defendant has not only undertaken to extend the Bank Guarantee by another three months by letter dated 17.11.1987 under Ex.P-8 and P-10 but also agreed to provide a fresh Bank Guarantee for the excess payment made against the fiRs.two boilers within 60 days.

14.In Kishorlal Gupta's case in AIR (1959) SCC1362 the Hon'ble Supreme Court has held that it was well settled that the parties to an original contract could by mutual agreement enter into a new contract in substitution of the old one.

Therefore, when the fiRs.defendant agreed to furnish a fresh guarantee and also renew the existing guarantee, the second defendant Bank cannot refused to honour its commitment and pay the amount of guarantee to the plaintiff.

15.The only defence raised by the second defendant Bank is that the Guarantee expired on 28.11.1987 and they have received the letter invoking the Bank Guarantee by the plaintiff only on 30.11.1987 and therefore, they cannot honour the commitment which is totally an untenable ground.

As per the terms and conditions of the Bank Guarantee, the plaintiff has got two months time from the expiry date to make a claim, especially when the fiRs.defendant has failed to fulfill the contractual obligations.

It is to be noted that the plaintiff has invoked the Bank Guarantee on 28.11.1987 i.e.on the last date of the expiry and therefore, there is no valid ground for the second defendant to decline to honour the Bank Guarantee.

16.It is relevant to point out the observations made by the Hon'ble Supreme Court in BANK OF INDIA versus NANGIA CONSTRUCTIONS (I) (P) LTD.(2008) 7 SCC290"12.It is unfortunate that a nationalised bank is finding excuses for refusing to make the payment on totally untenable and frivolous grounds.

The Division Bench was fully justified in making observations regarding the conduct of the nationalised bank.

The entire trust, faith and confidence of people depends on the conduct and credibility of the nationalised bank.

In the present day world, the national and international commercial transactions largely depend on bank guarantees.

In case the banks are permitted to dishonour their commitments by adopting such subterfuges, the entire commercial and business transactions will come to a grinding halt.

This principle has been reiterated in large number of cases by this Court.

We do not deem it appropriate to burden this judgment by reiterating all those judgments."

17.In VINITEX ELECTRONICS PRIVATE LTD.versus HCL INFOSYSTEMS LTD.(2008) 1 SCC544the Hon'ble Supreme Court held as under: "12.It is equally well settled in law that bank guarantee is an independent contract between bank and the beneficiary thereof.

The bank is always obliged to honour its guarantee as long as it is an unconditional and irrevocable one.

The dispute between the beneficiary and the party at whose instance the bank has given the guarantee is immaterial and of no consequence."

18.Keeping the above principles in mind, on analyse of the terms and conditions of the original Bank Guarantee and subsequent extended Guarantees which are to be read together it make abundant clear that what was furnished was a conditional Bank Guarantee and the second defendant is liable to pay the amount once it is established that the fact that the fiRs.defendant breached the contract and failed to refund the excess amount paid over and above the contract value.

It is pertinent to point that no allegation of fraud is pleaded by the defendants.

The plaintiff has invoked the Bank Guarantee within the validity period and therefore, the second defendant is liable to pay the amount under the Bank Guarantee to the plaintiff.

19.

In the result, the suit is decreed as prayed for with costs.

26.06.2009 Index : Yes / No Internet: Yes / No Sr.ARUNA JAGADEESAN.J.Sr.Pre-delivery Judgment in C.S.No.1542 of 1988 26.06.2009