Punjab National Bank vs Atmanand Singh on 6 May, 2020

Equivalent citations: AIR 2020 SUPREME COURT 2192, AIRONLINE 2020 SC 493, AIRONLINE 2020 SC 946

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Bench: Dinesh Maheshwari, A.M. Khanwilkar

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REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO……/2020
(Arising out of SLP(C) No. 11603/2017)

Punjab National Bank & Ors. …Appellant(s)

Versus

Atmanand Singh & Ors. ...Respondent(s)

JUDGMENT

A.M. Khanwilkar, J.

1. Leave granted.

2. This appeal takes exception to the judgment and order dated 23.2.2017 passed by the Division Bench of the High Court of Judicature at Patna1 in Letters Patent Appeal (LPA) No. 310/2009, whereby, the LPA filed by the appellants came to be dismissed while affirming the decision of the learned single Judge, dated 10.2.2009 in allowing the Civil Writ Jurisdiction Case (CWJC) No. 867/1999.

1 For short, “the High Court”

3. The Division Bench took note of the relevant background facts necessitating filing of writ petition by the respondent No. 1 for a direction to the appellant Bank to pay his lawful admitted claims in terms of agreement dated 27.5.1990 (Annexure 5(b) appended to the writ petition) and also to deposit the income tax papers with immediate effect. The Division Bench has noted as follows: “4.

The facts of the case is that the writ petitioner had taken a term loan of Rs.10,000/- from the Bank by way of financial assistance to run a business in the name of "Sanjeev Readymade Store" from Haveli Kharagpur Branch of Punjab National Bank in the district of Munger. The writ petitioner was paid the said sum of Rs.10,000/- in two instalments of Rs.4,000/- on 21.07.1984 and Rs.6,000/- on 01.10.1984. The writ petitioner had yet another savings account in the same branch of the respondents- bank. However, on 14.02.1990, the term loan with interest had mounted upto a figure of Rs.13,386/-. In 1989, the writ petitioner, who is Respondent no. 2 in the appeal, was granted two cheques of Rs.5,000/- each by the Circle Officer, Haveli Kharagpur under the Earthquake Relief Fund. The said two cheques were deposited with the Bank for encashment in the other savings account, but instead, were transferred to the loan account. This was done without any authorization of the writ petitioner and without direction of any competent authority. Some time thereafter, the writ petitioner's son was afflicted by cancer, which required immediate treatment at All India Institute of Medical Sciences, New Delhi. In order to meet the expenses of the treatment, writ petitioner sold 406 bhars of gold jewellery of his wife's "stridhan" and received Rs.14,93,268/-. He approached the branch of the respondents- bank with a sum of Rs.14,93,000/- on 04.08.1989 for issuance of two bank drafts, one in his name and the another in the name of his wife. The then Accountant, Mr. T.K. Palit showed his inability to prepare the drafts on the ground of shortage of staff on that day and requested the writ petitioner to deposit the amount in the savings account No. 1020 in the said branch. The Accountant, after receipt of the money, transferred total amount of Rs.15,03,000/- to the loan account, whereas in the loan account upto 14.02.1990 outstanding dues of principal and interest was only Rs.13,386/-. The writ petition made grievance before the Branch Manager of the said branch and also filed representations before the Bank authorities. Thereafter, the writ petitioner approached the District Magistrate, Sri Nanhe Prasad, who ordered the then Circle Officer, Haveli Kharagpur, District Munger, Sri Binod Kumar Singh to make a detailed enquiry into the matter and report. Accordingly, a Misc. Case No. 4 (DW 1) PNB/1989-90 was initiated and in those proceedings, various officials of the Punjab National Bank, including the then Branch Manager, District Coordination Officer of the Punjab National Bank and the Accountant of the Bank were examined from time to time and reports were submitted to the District Magistrate, Munger. Several witnesses were examined even by the District Magistrate, Munger. There were officers from the Regional Office of the Punjab National Bank, one of them being Sri Tej Narain Singh, the Regional Manager of the Punjab National Bank, Regional Office, Patna-B also deposed making reference of what had transpired to the Zonal Office of the Bank. On the basis of these statements, which were recorded by the Circle Officer and / or by the then District Magistrate-cum-Collector, Munger, Sri Gorelal Prasad Yadav, the matter proceeded. The basic assertion of the writ petitioner having been found correct and the liability having been accepted by the respondents- bank, it was reduced to an agreement dated 27.05.1990, which is Annexure-5B to the writ application between the parties. The agreement was signed by one and all in presence of the Circle Officer and the overall supervision of the District Magistrate. It was duly recorded in writing that the bank had received the deposit amounting to Rs.15,03,000/- as per deposits made on 02.08.1989, 04.08.1989 and 04.10.1989. It was also recorded that the total term loan and the liability of the writ petitioner up to 14.02.1990 came to Rs.13,386/- only and the amount of Rs. 14,89,614/- of the writ petitioner would be kept in the Fixed Deposit of the bank and shall be paid with interest by September, 1997. The writ application was filed, when the bank refused to honour this agreement. In support of the writ application, certified copies of the entire proceedings, depositions as had been

obtained by the writ petitioner in the year 1990 were annexed." The appellant□Bank contested the said writ petition and raised objections regarding the maintainability of the writ petition and disputed the money claim set up by the respondent No. 1 on the basis of alleged contractual agreement dated 27.5.1990. The appellant□Bank denied the allegation of transfer of proceeds of two cheques of Rs.5,000/□(Rupees five thousand only) each, allegedly received by the respondent No. 1 from the district authorities, to the loan account. The Bank also denied the allegation of deposit of Rs.14,93,000/□(Rupees fourteen lakhs ninety□three thousand only) by the respondent No. 1 in his Savings Fund Account No. 1020 or transfer of the said amount in his loan account. Further, on receipt of complaint from the respondent No. 1, the Regional Manager of the appellant□Bank instituted an internal enquiry conducted by Mr. N.K. Singh, Manager, Inspection and Complaints, E.M.O., Patna, who in his report dated 23.11.1998 noted that the respondent No. 1 had been paid the proceeds of two cheques of Rs.5,000/□(Rupees five thousand only) each in cash and there is no record about the deposit of Rs.14,93,000/□(Rupees fourteen lakhs ninety three thousand only) in his account with the concerned Branch. The appellant□Bank explicitly denied the genuineness and existence of the documents annexed to the writ petition and asserted that the same are forged, fabricated and manufactured documents. The Bank also placed on record that the respondent No. 1 had filed similar writ petition against another bank, namely, the Munger Jamui Central Cooperative Bank Limited being CWJC No. 4353/1993, which was eventually dismissed on 7/3.7.1995, as the claim set up by the respondent No. 1 herein in the said writ petition was stoutly disputed by the concerned Bank.

4. Be it noted that the learned single Judge, as well as, the Division Bench adverted to the stand taken by the appellant□Bank, seriously disputing the existence of the stated agreement and asserting that the same was fabricated and fraudulent document, as can be discerned from the order of the learned single Judge, which records as follows: □"11. Counter affidavit came to be filed by the respondent bank where they decided to deny the claim of the petitioner. They raised serious doubts with regard to the existence of the records of Misc. Case No. 4 (DW I) PNB/89□90. They took a stand that as per their knowledge no such records exist or is readily available and therefore the claim of the petitioner cannot be accepted or acted upon. The counter affidavit has tried to cast serious □7 □doubts about the so□called proceeding having been conducted and even an agreement having been entered into by the parties. It is also urged that the writ application cannot be maintained because the Court can not direct enforcement of an agreement. It is also submitted that the District Magistrate had no power to adjudicate the matter and even if for the sake of argument there was an agreement, the petitioner ought to have sought its enforcement through common law and not waited for filing the writ application after many a years. It is also urged that these are disputed questions of fact which cannot be decided in the writ application." Despite having noticed the objection regarding maintainability of the writ petition taken by the appellant□Bank, the learned single Judge, if we may say so, by a cryptic judgment and order, allowed the writ petition filed by the respondent No. 1 by observing as follows: □"13. The Court has gone through the plethora of documents which have been brought on record in support of the pleading of the petitioner. If the documents which have been brought on record are read as a whole this Court does get a feeling that the respondent bank wants to wriggle out of a ticklish situation by raising technical objections with regard to the maintainability of the writ application. Such voluminous documents cannot be created or manufactured. Merely because the respondent bank is suffering from selective amnesia the Court

is not willing to brush aside the materials which have been brought on record in support of the writ application. No serious effort has been made by the respondents to answer the submissions and the arguments made in the writ application. The annexures coupled with specific pleadings point to the fact that there was a serious grievance raised by the petitioner about misconduct or wrong banking procedure having been adopted by the employees of the Punjab National Bank in maintenance of the accounts of the petitioner. The writ application of the petitioner therefore cannot be dismissed on the technical objection made by the respondent bank.

14. In the given facts and circumstances noted above, the petitioner has succeeded in making out a case for interference and keeping the settled principle in this regard as noted above, the respondent Bank is hereby directed to take steps for payment of the money which had been quantified in terms of annexure 5B. It is clarified that order of payment is not for enforcement of agreement contained in annexure 5B but only a certification that the money of the petitioner must accrue to his account and must be paid back to him with due interest thereon as proper book keeping and maintenance of accounts of a customer is a public duty of the bank. The Court expects the respondent Bank to make payments within a period of three months from the date of communication/production of a copy of this order. The writ application stands allowed." (emphasis supplied)

5. The appellant Bank carried the matter before the Division Bench by way of LPA No. 310/2009. During the pendency of the said appeal, the Bank filed affidavit of Mr. Tapan Kumar Palit (the then Accountant of Branch Office, Haveli Kharagpur) dated 3.3.2009, specifically denying each of these facts, namely, (a) the respondent No. 1 had deposited an amount of Rs.14,93,000/ (Rupees fourteen lakhs ninety three thousand only) with the appellant Bank on 4.8.1989, (b) that the affiant participated in the enquiry alleged to have conducted under the orders of District Magistrate, Munger and (c) the affiant was a signatory to the alleged agreement dated 27.5.1990. Similar affidavit of Mr. Krishna Deo Prasad (the then Manager, Branch Office, Haveli Kharagpur) dated 4.9.2009 was filed, taking the same stand. Another affidavit of Mr. Bishnu Deo Prasad Sah (the then District Coordination Officer i.e. the D.C.O.) dated 5.9.2009 was filed, specifically denying the relevant facts and asserting that he was never appointed as an enquiry officer by the District Magistrate, Munger in terms of Misc. Case No. 04 (DW1) PNB/1989 90 and that he was not signatory to the alleged agreement dated 27.5.1990. The Division Bench was also conscious of the express stand taken by the appellant Bank before the learned single Judge, raising the issue of maintainability of the writ petition on the assertion that the case involved complex factual matters which cannot be adjudicated in exercise of writ jurisdiction. In paragraph 8 of the impugned judgment, the Division Bench noted thus: "8. Before the learned Single Judge as is the stand in this appeal, the Bank filed counter affidavit in the writ application raising serious doubt with regard to existence of any case registered as Misc. Case No. 4 (DW 1) PNB/1989 90. They took the stand that no enquiry was ever conducted nor there was any enquiry report nor any official of the Bank ever deposed in the enquiry. There was no record of those proceedings and the certified copies, which have been produced and were part of the record of the writ application, were forged and created by the writ petitioner. Another objection was taken by the Bank in the writ proceeding that the District Magistrate had no power to adjudicate the matter and order for enquiry. Yet another objection was taken that the matter relates to disputed questions of fact, which is not maintainable under Article 226 of the Constitution of India in writ jurisdiction."

6. Despite the specific plea taken by the appellant□Bank, disputing the transactions and documents in question, on the basis of which the respondent had sought relief by way of writ petition, the Division Bench proceeded to dismiss the LPA filed by the Bank by holding thus: □"13. Having heard the learned counsel for the parties and taking into consideration the copies of the proceedings of Misc. Case No. 4 (DW1) PNB/1989□90 as well as the certified copy of the proceedings filed before this Court in appeal, which is a voluminous one with a plethora of documents, it could not have been a figment of imagination or a piece of fiction. Thus, the order of the learned Single Judge does not suffer from any infirmity and calls for no interference, which has further been fortified by affirmation of the officer and the office peon as well as the Head Clerk posted at the relevant time in the office of the Circle Officer, Haveli Kharagpur.

14. The order of the learned Single Judge passed in CWJC No. 867 of 1999 is affirmed and the appeal is dismissed."

7. Being aggrieved, the Bank is in appeal before this Court. While issuing notice on 21.4.2017, this Court had noted thus: □"Issue notice.

As respondent No. 1 is represented by Mr. Amrinder Sharan, learned senior counsel being assisted by Mr. Awanish Sinha, learned counsel no further notice shall be issued to him.

As far as other respondents are concerned, notice be issued to them fixing a returnable date within twelve weeks.

Be it noted that Mr. Amrinder Sharan, learned senior counsel has agreed that the respondent No. 1 is prepared to face any inquiry and investigation by the Central Bureau of Investigation if this Court feels it appropriate. Mr. Dhruv Mehta, learned senior counsel being assisted by Mr. Rajesh Kumar, learned counsel accepts the suggestion made by Mr. Sharan and if need be the same can be adverted to after the appearance of other respondents.

There shall be stay of operation of the impugned judgment dated 23rd February, 2017 passed by the High Court until further orders." The appellant□Bank, inter alia, invited our attention to the affidavit filed by the District Magistrate – Mr. Uday Kumar Singh, before this Court in the present appeal, wherein he has reiterated the stand taken by him in the 3rd supplementary counter affidavit dated 5.5.2016 filed before the High Court in compliance of order dated 18.3.2016. In the said affidavit, it had been stated that on perusal of records, reports of different officers and staff and their written depositions, it prima facie appears that the documents pertaining to Misc. Case No. 04 (DW1) PNB/1989□90 (in the office of Anchal Adhikari, H. Kharagpur) are forged and fabricated, as no contemporaneous document was available either in the Sub□Divisional Office, H. Kharagpur or in the headquarters, Kharagpur in that regard.

8. The grievance of the appellant□Bank is that considering such a categoric plea taken, which was supported by affidavits and the report of the District Magistrate (referred to in his affidavit dated 5.5.2016 filed in compliance of order dated 18.3.2016 passed by the Division Bench of the High Court), it was amply clear that the matter involved complex factual aspects, which could not and

ought not to be answered in writ jurisdiction and that the respondent No. 1 (writ petitioner) must take recourse to appropriate legal remedy for enforcement of the alleged agreement dated 27.5.1990, if so advised. The Bank has placed reliance on the decisions of the Constitution Bench of this Court in Thansingh Nathmal & Ors. vs. Superintendent of Taxes, Dhubri & Ors.2 and Suganmal vs. State of Madhya Pradesh & Ors.3 to contend that the writ petition ought to have been dismissed by the High Court.

9. The respondent No. 1, on the other hand, submitted that merely because the Bank has disputed the relevant facts, does not warrant dismissal of writ petition, as the jurisdiction of the High Court under Article 226 of the Constitution is very wide including it can cross□examine the concerned affiant(s) and enquire into all aspects of the matter. To buttress this submission, reliance is placed on Smt. Gunwant Kaur & Ors. 2 AIR 1964 SC 1419 3 AIR 1965 SC 1740 vs. Municipal Committee, Bhatinda & Ors.4, Babubhai Muljibhai Patel vs. Nandlal Khodidas Barot & Ors.5, M/s. Hyderabad Commercials vs. Indian Bank & Ors.6 and ABL International Ltd. & Anr. vs. Export Credit Guarantee Corporation of India Ltd. & Ors.7. The respondent No. 1 would additionally urge that the case set up by him in the writ petition is substantiated by the certified copies of the main docket alongwith that of the dispatch register regarding Misc. Case No. 04 (DW1) PNB/1989□90 and there is presumption about its genuineness. The respondent No. 1 has placed reliance on the decisions of this Court in Bhinka & Ors. vs. Charan Singh8 and Kaliya vs. State of Madhya Pradesh9. Further, the circumstances emanating from the records clearly substantiate the fact that the stated agreement was executed between the parties on 27.5.1990 and it is not open to the appellant–Bank to resile from the said agreement. The existence of the agreement having been substantiated in the enquiry being miscellaneous case referred to above, wherein statement of the officials of the 4 (1969) 3 SCC 769 5 (1974) 2 SCC 706 6 1991 Supp (2) SCC 340 7 (2004) 3 SCC 553 8 AIR 1959 SC 960 9 (2013) 10 SCC 758 Bank at the relevant time came to be recorded supporting the plea of the respondent No. 1 including about the genuineness of the certified copies relied upon, it was a case of admission of liability by the appellants and the claim of the respondent No. 1 was, therefore, indisputable. In such a situation, the learned single Judge of the High Court was justified in allowing the writ petition and the reasons on which stated relief came to be granted commended to the Division Bench. Therefore, no inference by this Court is warranted and moreso, because the respondent No. 1 has become a victim of circumstances and it would be unfair and unjust to drive him to take recourse to alternative remedy by filing a suit for enforcement of the agreement at this distance of time. The respondent No. 1, therefore, has urged to dismiss this appeal.

10. We have heard Mr. Dhruv Mehta, learned senior counsel for the appellants, Mr. J.S. Attri, learned senior counsel for the respondent No. 1 and Mr. Devashish Bharuka, learned counsel for the respondent No. 2.

11. From the factual matrix highlighted hitherto, it is manifest that there is no unanimity between the appellant□Bank and the respondent No. 1 on the relevant facts, on the basis of which the relief sought in the writ petition was founded. The Bank had expressly denied the existence of the alleged agreement dated 27.5.1990 including the fact that the respondent No. 1 had deposited the amount of Rs.14,93,000/□(Rupees fourteen lakhs ninety□three thousand only). The Bank had relied upon the affidavits of the concerned Bank officials, and also on the report of the District Magistrate referred

to in his affidavit dated 5.5.2016 filed before the Division Bench of the High Court in compliance of its order dated 18.3.2016. The Bank had categorically denied the case set up by the respondent No. 1 in the writ petition in toto; and moreso the stand taken by the Bank could be substantiated on the preponderance of probabilities. In other words, the case set up by the respondent No. 1 in the writ petition is neither an admitted position nor is it possible to even remotely suggest that it is indisputable, so as to bind the appellant□Bank on that basis. Moreover, from the narration of facts, it is more than clear that it would involve scrutiny of complex matters and issues including about the existence of the very agreement, which is the foundational evidence for seeking relief as prayed in the writ petition. In that, the genuineness and existence of the stated agreement has been put in issue by the appellant□Bank and which is made good on the basis of affidavits of concerned Bank officials and even supported by the report of the District Magistrate referred to in his affidavit dated 5.5.2016.

12. Notably, the respondent No. 1 had filed similar writ petition against another bank in the year 1995, which came to be rejected as the facts stated therein were also disputed by that bank. In the present case, however, the learned single Judge was impressed by the specious fact that the respondent No. 1 had produced plethora of documents and thus assumed that the appellant bank wanted to wriggle out of the ticklish situation by raising technical objection of maintainability of the writ application. This observation of the learned single Judge is nothing short of being based on surmises and conjectures. The matter such as the present one, could not be decided on the basis of some inference or a feeling gathered by the Court as noted in the impugned judgments. The hard facts on record clearly suggested that the appellant□Bank had supported its plea by relying on affidavits of the concerned Bank officials including the report of the District Magistrate. The learned single Judge very conveniently ignored that aspect and proceeded to hold that the appellant□Bank was suffering from selective amnesia, having noted that voluminous documents are relied upon by the respondent No. 1 (writ petitioner) and thus assumed that the same could not be created or manufactured.

13. Be that as it may, the learned single Judge without analysing the entirety of the stand of the appellant and the relevant documents, proceeded to make observations about the conduct of the appellant□Bank, which was certainly avoidable. We say so because, the High Court could not have assumed that the documents produced by the respondent No. 1 (writ petitioner) are genuine and admissible, despite the express denial by the appellant□Bank and its officials on affidavit about being party to the said agreement as alleged. If one reads the stated agreement, it is in the nature of an order passed by some authority, running into almost 20 closely typed pages, recording the stand taken by the parties in the form of an agreement between them. From the terms stated therein, it is unfathomable as to how the Bank would agree to such onerous terms. Concededly, no policy document or authorisation of the signatory of the Bank has been produced which would indicate that such an agreement could be reached by the Bank with the respondent No. 1.

14. Be it noted that on one hand, the case made out by the respondent No. 1 is that he had sold his family gold and the sale proceeds received were deposited in the concerned Branch of the appellant Bank for withdrawal, as the amount was required by him for meeting medical expenses of his ailing son suffering from cancer. At the same time, vide alleged agreement, the respondent No. 1

conveniently agrees to invest the amount for seven (7) years, which circumstance also raises serious doubt about the genuineness of the document. We do not wish to elaborate on the terms set out in the subject agreement except to observe that the plea taken by the appellant-Bank about genuineness of the document is debatable (triable) and is not a case of admitted position or indisputable fact, so as to proceed against the appellant-Bank by directing payment of the amount claimed by the respondent No. 1 (writ petitioner), on the basis of such an agreement.

15. The judgment of the learned single Judge has completely glossed over these crucial aspects and the writ petition has been disposed of in a very casual manner. The Division Bench of the High Court committed the same error in upholding the decision of the learned single Judge. The Division Bench has not even analysed the efficacy of the affidavits filed in support of the stand taken by the appellant-Bank during the pendency of the LPA. It merely reiterates the view taken by the learned single Judge in just two short paragraphs reproduced in paragraph 6 above. It has not analysed the efficacy of the proceedings in Misc. Case No. 04 (DW1) PNB/1989-90, as well as, the certified copy of the proceedings filed in appeal before it, in the context of affidavits of Bank officials and report of the District Magistrate. The Division Bench was also misled by the voluminous documents relied upon by the respondent No. 1 and assumed that the same could not be a figment of imagination or a piece of fiction.

16. Even if the impugned judgments were to be read as a whole, there is no analysis of the relevant documents and in particular, the stand taken by the appellant-Bank expressly denying the existence of the stated agreement and genuineness thereof, which plea was reinforced from the affidavits of the concerned Bank officials and the report of the District Magistrate. Notably, the District Magistrate in the affidavit filed in compliance of the order dated 18.3.2016 had clearly denied the existence of the stated proceedings for want of contemporaneous official record in that regard. This aspect has not been taken into account by the High Court at all. On facts, therefore, the High Court committed manifest error in disregarding the core jurisdictional issue that the matter on hand involved complex factual aspects, which could not be adjudicated in exercise of writ jurisdiction.

17. The appellant-Bank has rightly invited our attention to the Constitution Bench decision of this Court in Thansingh Nathmal (supra). In paragraph 7, the Court dealt with the scope of jurisdiction of the High Court under Article 226 of the Constitution in the following words: -"7. ... The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under

Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up.

(emphasis supplied) Similarly, another Constitution Bench decision in Suganmal (supra) dealt with the scope of jurisdiction under Article 226 of the Constitution. In paragraph 6 of the said decision, the Court observed thus: □"6. On the first point, we are of opinion that though the High Courts have power to pass any appropriate order in the exercise of the powers conferred under Article 226 of the Constitution, such a petition solely praying for the issue of a writ of mandamus directing the State to refund the money is not ordinarily maintainable for the simple reason that a claim for such a refund can always be made in a suit against the authority which had illegally collected the money as a tax. ... We do not find any good reason to extend this principle and therefore hold that no petition for the issue of a writ of mandamus will be normally entertained for the purpose of merely ordering a refund of money to the return of which the petitioner claims a right." (emphasis supplied) And again, in paragraph 9, the Court observed as follows: □"9. We therefore hold that normally petitions solely praying for the refund of money against the State by a writ of mandamus are not to be entertained. The aggrieved party has the right of going to the civil court for claiming the amount and it is open to the State to raise all possible defences to the claim, defences which cannot, in most cases, be appropriately raised and considered in the exercise of writ jurisdiction." (emphasis supplied) In Smt. Gunwant Kaur (supra) relied upon by the respondent No. 1, in paragraph 14, the Court observed thus: □"14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit in reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for anologous reasons." (emphasis supplied) We restate the above position that when the petition raises questions of fact of complex nature, such as in the present case, which may for their determination require oral and documentary evidence to be produced and proved by the concerned party and also because the relief sought is merely for ordering a refund of money, the High Court should be loath in entertaining such writ petition and instead must relegate the parties to remedy of a civil suit. Had it been a case where material facts referred to in the writ petition are admitted facts or indisputable facts, the High Court may be justified in examining the claim of the writ petitioner on its own merits in accordance with law.

18. In the next reported decision relied upon by the respondent No. 1 in Babubhai (supra), no doubt this Court opined that if need be, it would be open to the High Court to cross□examine the affiants. We may usefully refer to paragraph 10 of the said decision, which reads thus: □"10. It is not necessary for this case to express an opinion on the point as to whether the various provisions of the Code of Civil Procedure apply to petitions under Article 226 of the Constitution. Section 141 of the Code, to which reference has been made, makes it clear that the provisions of the Code in regard to suits shall be followed in all proceedings in any court of civil jurisdiction as far as it can be made applicable. The words "as far as it can be made applicable" make it clear that, in applying the various provisions of the Code to proceedings other than those of a suit, the court must take into account the nature of those proceedings and the relief sought. The object of Article 226 is to provide a quick and inexpensive remedy to aggrieved parties. Power has consequently been vested in the High Courts to issue to any person or authority, including in appropriate cases any government, within the jurisdiction of the High Court, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. It is plain that if the procedure of a suit had also to be adhered to in the case of writ petitions, the entire purpose of having a quick and inexpensive remedy would be defeated. A writ petition under Article 226, it needs to be emphasised, is essentially different from a suit and it would be incorrect to assimilate and incorporate the procedure of a suit into the proceedings of a petition under Article 226. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right of relief, questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is no doubt discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises complex questions of fact, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute should not appropriately be tried in a writ petition, the High Court may decline to try a petition (see Gunwant Kaur v. Bhatinda Municipality [(1969) 3 SCC 769]. If, however, on consideration of the nature of the controversy, the High Court decides, as in the present case, that it should go into a disputed question of fact and the discretion exercised by the High Court appears to be sound and in conformity with judicial principles, this Court would not interfere in appeal with the order made by the High Court in this respect." (emphasis supplied) This decision has noticed Smt. Gunwant Kaur (supra), which had unmistakably held that when the petition raises complex questions of facts, the High Court may decline to try a petition. It is further observed that if on consideration of the nature of the controversy, the High Court decides to go into the disputed questions of fact, it would be free to do so on sound judicial principles. Despite the factual matrix in the present case, the High Court not only ventured to entertain the writ petition, but dealt with the same in a casual manner without adjudicating the disputed questions of fact by taking into account all aspects of the matter. The manner in which the Court disposed of the writ petition, by no stretch of imagination, can qualify the test of discretion having been exercised on sound judicial principles.

19. In Hyderabad Commercials (supra), on which reliance has been placed, it is clear from paragraph 4 of the said decision that the Bank had admitted its mistake and liability, but took a specious plea about the manner in which the transfer was effected. On that stand, the Court proceeded to grant relief to the appellant therein, the account holder. In the present case, however, the concerned officials of the Bank have denied of being party to the stated agreement and have

expressly asserted that the said document is forged and fabricated. It is neither a case of admitted liability nor to proceed against the appellant Bank on the basis of indisputable facts.

20. Even the decision in ABL International Ltd. (supra) will be of no avail to the respondent No. 1. This decision has referred to all the earlier decisions and in paragraph 28, the Court observed as follows: □"28. However, while entertaining an objection as to the maintainability of a writ petition under Article 226 of the Constitution of India, the court should bear in mind the fact that the power to issue prerogative writs under Article 226 of the Constitution is plenary in nature and is not limited by any other provisions of the Constitution. The High Court having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. The Court has imposed upon itself certain restrictions in the exercise of this power. (See Whirlpool Corpn. v. Registrar of Trade Marks [(1998) 8 SCC 1]) And this plenary right of the High Court to issue a prerogative writ will not normally be exercised by the Court to the exclusion of other available remedies unless such action of the State or its instrumentality is arbitrary and unreasonable so as to violate the constitutional mandate of Article 14 or for other valid and legitimate reasons, for which the Court thinks it necessary to exercise the said jurisdiction." (emphasis supplied)

21. For the view that we have taken, it is not necessary for us to dilate on the decisions of this Court in Bhinka (supra) and Kaliya (supra), which have dealt with the efficacy and admissibility of certified copies of the relevant documents. Be it noted that these decisions are in reference to the suit/trial in the concerned case, where the documents are required to be proved by the party relying upon it by examining competent witnesses to prove the existence thereof and also their contents.

22. A priori, we have no hesitation in taking the view that in the facts of the present case, the High Court should have been loath to entertain the writ petition filed by the respondent No. 1 and should have relegated the respondent No. 1 to appropriate remedy for adjudication of all contentious issues between the parties.

23. Accordingly, we are inclined to allow this appeal. As a consequence, the impugned decisions of the learned single Judge and the Division Bench are set aside and the writ petition filed by the respondent No. 1 shall stand dismissed with liberty to respondent No. 1 to take recourse to other alternative remedy as may be permissible in law. The same be decided on its own merits in accordance with law uninfluenced by the observations on factual matters made in the impugned judgment and order of the High Court or for that matter, this judgment. In other words, all contentions available to both parties are left open including to proceed against respondent No. 1 as per law, if it is found by the concerned Court/forum that false and incorrect statement on oath has been made by the respondent No. 1 and that the documents produced by him are forged and fabricated documents.

24. In view of the above, this appeal succeeds. The impugned decisions are set aside and the writ petition filed by the respondent No. 1 being CWJC No. 867/1999 stands dismissed with liberty as aforesaid. There shall be no order as to costs. Pending interlocutory applications, if any, shall stand disposed of.

.....J. (A.M. Khanwilkar) .....J. (Dinesh Maheshwari) New Delhi;

May 6, 2020.