Allahabad Bank And Anr. vs Mecon on 8 November, 2004

Equivalent citations: AIR2005JHAR54, II(2005)BC387, [2005(1)JCR265(JHR)]

Author: Hari Shankar Prasad

Bench: Hari Shankar Prasad

JUDGMENT

Hari Shankar Prasad, J.

1. This appeal is directed against the judgment dated 1lth February, 2003 and decree dated 21.2.2003 passed in Money Suit No. 83 of 1996 whereby the learned Sub-Judge-IV, Ranchi decreed the suit.

2. The case of the plaintiff-respondent, in brief, is that the Regional Manager of defendants, by his letter dated 20.2.1992 requested the plaintiff-MECON Company to enlist them as bankers of the plaintiff and requested for opening an account with them. After discussions held on 26.2.1992 with the General Manager, Deputy General Manager and Regional Manager of the defendants about specific requirement of Banking Services, the defendants, vide their letter dated 27.2.1992 intimated their acceptance to provide the following services on opening an account with them.

(i) Cheque received from the plaintiff would be given instant credit without any charge.

(ii) Remittance to plaintiff s outstation branches would be done free of cost.

(iii) Cash would be remitted to plaintiffs office at their cost, and

(iv) They invited proposal of Bank Guarantee, from the plaintiff for their consideration.

3. The plaintiff, in response to their letter dated 27.2.1992 informed the defendants, vide letter dated 28.2.1992, that in course of its business the plaintiff is required to furnish necessary Bank Guarantee against the advances received from its clients and the plaintiff being a public sector undertaking, its clients are mostly public sector undertakings and Government organizations except a few private parties, so a request was made to waive any commission if payable for issuance of such Bank guarantees. The plaintiff informed that necessary margin money for the Bank guarantee would be kept in deposit with defendants. Thereafter plaintiff submitted two applications dated 24.3.1992 and 30.3.1992 respectively for sanction of bank guarantee limit of Rs. 25.00 crores each totaling to

Rs. 50.00 crores to the defendants as the plaintiff was expecting a big order from a public sector undertaking. The plaintiff, vide its letter dated 7.5.1992, informed the defendants that it had received a letter of intent from Steel Authority of India Ltd. Rourkela Steel Plant for slabcasting shop with accessories SMS-02 under the modernization of their Steel Plants and the value of the said work was Rs. 360.00 crores, for which the plaintiff would require to furnish Bank Guarantee for 10% towards advance payment and another Bank Guarantee for 5% towards scrutiny deposit and as such plaintiff required bank guarantee to the extent of Rs. 54 crores for the said work and requested the defendant to accord necessary sanction for the same and in reply to that the defendants forwarded the sanction limit of bank guarantee to the extent of Rs. 50 crores to the plaintiff by letter dated 14th July, 1992 without contemplating for any commission to be charged for such guarantee but plaintiff was required to keep 10% of the Bank guarantee amount as margin with the defendants. The defendants in the forwarding letter had stated that the said sanction was made on their understanding that they would get substantial deposit from the plaintiff, which they assumed to be deposited to the tune of Rs. 42.00 crores as per their cost analysis submitted to their Head Office. The plaintiff, immediately on receipt of the aforesaid sanction letter, informed the defendants by its letter dated 27.7.1992 that the plaintiff cannot ensure the defendants for keeping the deposits of the order mentioned in the defendants' letter dated 14.7.1992. However, the plaintiff assured to keep their trade surplus from time to time with the defendants. The defendants, on receipt of the aforesaid letter dated 27.7.1992 of the plaintiff, did not respond and, therefore, it was reasonable for the plaintiff to infer that the defendants' aforesaid assumption to keep deposit to the extent of Rs. 42.00 crores would not be an impediment in obtaining the Bank guarantee from them and on the basis of aforesaid letter, the terms and conditions of the contract for the bank guarantee were as follows :

(i) The defendant No. 2 would provide Bank Guarantee to the plaintiff to the extent of Rs. 50 crores.

(ii) The defendant would not charge any commission for providing such Bank Guarantee.

(iii) The plaintiff would keep deposit of 10% of the value of the Bank Guarantee as margin money.

(iv) The plaintiff would keep its trade surplus with the defendant No. 2 from time to time.

4. On the basis of aforesaid sanction letter dated 14.7.1992 for granting bank guarantee, the plaintiff kept fixed deposits to the extent of Rs. 5.00 crores with the defendants for the purposes of using the same as margin money of 10% of the value of bank guarantee to be issued by the defendants from time to time upto the value of Rs. 50.00 crores. In view of the aforesaid contract, the transaction between both the parties commenced and on the request of the plaintiff the bank guarantee of different values were issued by the defendant No. 2 without charging any commission over the same as contemplated in their sanction letter dated 14.7.1992. The further case of the plaintiff-respondent is that after one and half years of the banking transaction, the defendant No. 2 suddenly by its letter

dated 8.12.1993 informed the plaintiff about the unilateral decision of their higher authorities to charge commission @ 15% per month from the plaintiff on the three bank guarantees aggregating to Rs. 19.86 crores issued by them on behalf of the plaintiff without charging any commission. The defendant No. 2 requested the plaintiff to make available necessary fund to be realized by way of amount of commission. It was alleged that the defendants decision to charge commission was due to non-compliance by the plaintiff in respect to the alleged understanding that the transaction of the plaintiffs contract with SAIL, Rourkela Steel Plant was to be routed through the defendant-bank. The defendant No. 2 has also informed in the said letter about the cancellation of the overdraft limit of Rs. 5.00 crores against Book debts and the instant credit of cheque facility. There was some correspondence between both the parties but the plaintiff denied its liability to pay any commission on the bank guarantee as per the terms of the contract. The plaintiff informed the defendant that it would route the entire transaction in respect of the contract entered with SAIL through the defendantBank but the same would not be possible due to defendants' withdrawal of instant credit of cheque facility. It was also informed that initial amount received from Rourkela Steel Plant would not be routed through the defendant-Bank as the SAIL had requested to keep the said amount deposited with them and so the plaintiff had no control over the said transaction. But the defendants, vide their letter dated 23.3.1994, declined the above request of the plaintiff on the ground that sanction of the bank guarantee without charging any commission was accorded on the basis of certain cost benefit analysis on the unwritten understanding that the plaintiff would place a deposit of Rs. 35.00 crores in the fixed deposit with them, which the plaintiff failed to fulfil and invested their fund with SAIL at higher rate of interest and, therefore, plaintiff submits that aforesaid contention of the defendants is contrary to their stand stated earlier and also contrary to their sanction letter dated 14.7.1992. As the defendants were not agreeing to continue the contract, the plaintiff, vide its letter dated 6.4.1994 requested the defendants to grant three months time from the date of communication of their decision so that plaintiff could recognize its banking operation, but the defendants, by their letter dated 22.4.1994 declined the request and asked the plaintiff to pay the alleged bank commission @ 3% per annum in stead of 15% per month, as indicated earlier. The plaintiff, by its letter dated 16th May, 1994, reiterated that bank guarantee issued in terms of the sanction against the margin money of 10% without charging any bank commission did not in any way permit the defendants to charge bank commission at a later date. Three bank guarantees of Rs. 2,42,98,609/- issued by the defendants' Chowringhee Branch have been returned after being duly discharged by the beneficiary. The further case of the plaintiff is that in spite of the clear contractual posi- tion the plaintiff relied on the terms and conditions of sanction and disputed the right of the bank to charge commission on the amount of Bank guarantee. The defen- dants by the lawyer's letter dated 29.12.1994 demanded payment of commission on bank guarantee, which was replied to by the plaintiff by its lawyer's letter dated 11.1.1995. The plaintiff by its letter dated 22.1.1995 returned the bank guarantee Nos. 17/92 and 18/92 both dated 24.10.1992 to the defendant No. 2 for cancellation and requested them to return the fixed deposit receipts kept with them as margin money. The plaintiff had kept fixed deposit to the extent of Rs. 5.00 crores with the defendant Bank to use as margin money for availing the Bank guarantee. The plaintiff desired to encash some of its FDRs prematurely due to exigencies of its business and presented 11 Nos. of FDRs amounting to Rs. 2.40 crores through its another banker Union Bank of India on 9.12.1992, which was not allowed by the defendant No. 2 on the ground that the same was not possible without prior permission of their higher authorities. Subsequently on 21.12.1994 the defendant No. 2 informed the plaintiff that they

would not allow the encashment pf FDRs until and unless the commission of the bank guarantees was not paid to them. A request was made to the defen- dants to obtain permission of their higher authority before 22.12.1994, as the plain- tiff needed the money to meet its commercial obligations and accordingly the plaintiff again presented those, FDRs on 22.12.1994, which were again declined by the defendant No. 2 on the same day and on the same plea. The plaintiff thereafter presented one FDR No. 481442/2043 dated 5.7.1994 for Rs. 20.00 lacs on its maturity on 5.1.1995 not for collection of matured amount but the same was declined by defendant No. 2 to remit the same on 6.1.19951 Again another FDR No. 481447/2048 dated 12.7.1994 for Rs. 20.00 lacs matured on 12.1.1995 was presented but the same was also returned on 14,1.1995. Thereafter six FDRs, which matured on 30.1.1995, were presented for encashment but the same were arbitrarily returned and the refusal on behalf of the defendant No. 2 is against the banking norms and regulations and in breach of contract. This action on the part of the defendants caused damages to the plaintiffs good will the reputation. There- after plaintiff issued a legal notice dated 14.2.1995 through its lawyer calling upon defendant No. 2 to intimate within seven days from the date of receipt of the said notice as to whether they were agreeable to pay the matured amount of FDRs on presentation. On 22.2.1995 another legal notice was issued on behalf of the plaintiff and called upon the defendants to release all FDRs along with interest. The defendant No. 2, vide its letter dated 25.2.1995, in- timated that it had realized the bank commission @ 1.8% per annum amounting to Rs. 85,79,835/- and out of this maturity value of plaintiffs 11 numbers of FDRs amounting to Rs. 2.40 crores the defen- dants returned a sum of Rs. 1,63,80,166 through a banker's cheque No. 541019/ 1017 and they also returned plaintiffs other thirteen nos. of FDRs amounting to Rs. 2.60 erores. The plaintiff by its letter dated 24.4.1995 requested the defendants to refund a sum of Rs. 85,79,834/-, which were illegally appropriated- towards Bank Commission out of the maturity proceeds of FDRs amounting to Rs. 2.40 crores and plaintiff also requested to pay interest over the matured amount of FDRs for the period from the date of maturity till the date of actual payment. The defendants by their letter dated 23.5.1995 declined to refund the commission already charged by them, however, they agreed to pay interest on the FDRs.

4. The defendants-appellants ap- peared and contested the suit. Besides taking ornamental defences such as suit is not maintainable and barred by principle of waiver and estoppel and barred by law of limitation, ' the defendants, stated that plaintiff has availed the bank facilities from the bank such as bank guarantee etc. for doing its business and said privileges were extended by the Bank on payment of commission and as such the plaintiff is liable to pay commission, but it failed to do so and hence the commission amount was deducted from the plaintiffs FDRs. It is stated that the plaintiff, on the basis of pleadings in the plaint, has also sought the reliefs without any reasonable basis, and

(a) On an adjudication, it be declared that the defendants have no right to claim any amount towards bank commission for establishing the bank guarantee on behalf of the plaintiff. In this regard the defendant states that the aforesaid relief is itself against the banking rules and norms of the defendant and if any concession is given by the Bank-Defendant, it is always secured that the same concession will be adjusted from the other business of the party, but in the instant case the plaintiffs intention is to avail the concession from the defendant bank, but not to adjust the same from other business with the defendant.

(b) It may be further declared that the defendants are not entitled to withhold the payment of matured fixed deposit received, after their maturity period., if the same are under lien period. In this regard, the defendants submit that normally they never detained the payment of FDR but in the instant case in extraordinary circumstances, the defendant was con strained to withhold the same as it failed to pay the charges towards Bank's commission against Bank Guarantees by the defendant under the provision of Indian Contract Act. The defendant being a Bank is very much within its right to realize its dues. Accordingly relief claimed by the plaintiff is not maintainable.

5. It is admitted that discussions were held on 26.2.1992 with the bank officials, but in the same meeting it was decided that the Bank will provide certain facilities to the plaintiff, provided that the plaintiff will keep fixed deposit of Rs. 42 crores with the bank at Doranda Branch and in view of the acceptance by the plaintiff, the defendants intimated their acceptance on 27.2.1992. The exact wording of defendants' letter dated 27.2.1992 (Clause IV in original) are "Bank guarantee proposal, if any, may be sent to us so that the same may be placed before our higher authorities." A request to the bank was also made to waive commission, if any, for issue of such bank guarantee because plaintiff was aware that commission is charged on issuance of bank guarantee and if the bank waives the commission, definitely being commercial organization, it will be compen-. sated by otherwise, which was committed by the plaintiff by depositing a lump sum amount. The contention of the defendants is that the plaintiff itself by its letter requested the defendants to furnish the terms and conditions for waiving the bank guarantee and thereafter the Regional Manager of the Bank referred the matter to the Deputy General Manager (Zonal Office), vide letter dated 5.3.1992 with its recommendation that on 10% margin money Bank may issue bank guarantee free from any commission and prior to their formal proposal Bank may agree in principle to the same and in turn thereof bank expect to deposit a sum of Rs. 25.30 crores in term deposit or in any other form and their current account is being opened within a day or two, and a copy of the said letter was also sent to the General Manager, Finance of the plaintiff. Thereafter plaintiff-respondent through its Chairman-cum-Managing Director issued a letter dated 10.3.1992 and requested the Regional Manager of the defendants to open current account styled "Metallurgical and Engineering Consultants (India) Ltd. in following Branches :

(a) Hinoo. Branch, Main Road, Ranchi.

(b) Chowringhee Branch, 59-A, CD. Nehru Road, Calcutta-700020.

(c) Balangir, Tikzapara, Balangir, District Balangir, Orissa.

6. The Regional Manager of the Bank, in reply to that, issued a letter dated 10.3.1994 to defendant No. 2 informing him that the Bank's General Manager (PA) has accepted the following conditions in principle.

(i) Cheques received by us will be given instant credit to the plaintiffs account without any charges.

(ii) Remittance to their out-station branches will be done free of cost.

(iii) Cash will be remitted, to the plaintiffs office at Bank's cost and a copy of this letter was also sent to the General Manager (Finance) of the plaintiff.

7. The further case of the defendants' is that the acceptance of the aforesaid conditions was accepted on the basis of cost benefit analysis made by the Bank on the written understanding that the plaintiff would place a deposit merely Rs. 42 crores in fixed deposit with the Bank and thereafter the General Manager of the plaintiff (finance) issued a letter dated 13.3.1992 to the defendant No. 2 enclosing the specimen signature of the authorized person to operate the plaintiff's account and till the opening of the account with the defendants no commitment was made by the defendant Bank for extending Bank guarantee facility without any charges. By letter dated 30.3.1992 the plaintiffs Deputy General Manager (Finance) requested the Regional Manager of the defendants to kindly approve the bank guarantee limit of Rs. 50 crores instead of Rs. 25 crores and on the same day Senior Accounts Officer of the plaintiff also issued a letter to the defendant No. 2 forwarding an application for Bank guarantee of Rs. 25 crores in addition to earlier application dated 24.3.1992 and it was also mentioned that Board's approval for Bank guarantee of Rs. 50 crores will be sent to the defendant No. 2 later on. Plaintiffs General Manager (Finance) issued another letter dated 8.4.1992 requesting the Regional Manager of the defendant Bank to furnish the desired information for sanction of bank guarantee of Rs. 50 crores and on 10.4.1992 the Finance Manager of the plaintiff requested the Defendant No. 2 to intimate as to whether it will be possible for the Bank to issue the Bank guarantee about Rs. 40 to 50 lakhs in anticipation of the Board's approval and by another letter dated 7.5.1992 the Finance Manager of the plaintiff communicated the minutes of the 103rd meeting of the Board of Directors of the plaintiff held on 24.4.1992 according approval for obtaining bank guarantee from the defendant Bank upto limit of Rs. 25 crores and till date there was no assurance even written or oral for extending bank guarantee free of cost. But, bank guarantee of Rs. 50 crores was extended by the defendant Bank to * the plaintiff on the understanding that substantial deposit approximately to the tune of Rs. 40 crores will be given by the plaintiff to the defendants to meet the cost which was calculated by the Bank, which comes about Rs. 134.81 (in lakhs) per year. On the aforesaid understanding that the plaintiff will place deposit of Rs. 40 crores, the defendant No. 2 issued a letter to the Deputy General Manager on 4.7.1991 to issue direction with regard to bank guarantee to the plaintiff and Head Office of the defendant Bank sanctioned a limit of Rs. 50 crores for the purpose of bank guarantee to be availed by the plaintiff and defendant No. 2 accordingly issued a letter to the General Manager (F) on 14.7.1992 intimating the sanction of Rs. 50 crores for bank guarantee and in the said letter it was specifically mentioned that :

> "It may be mentioned that while submitting the cost analysis to our Head Office we had taken on account of deposit to the tune of Rs. 42 crores, as assured by you. .
>
> Further in terms of letter No. 1.1/75 of 7.5.1992 you have agreed to execute the contract entirely through us and all the transaction for this job shall be made through our Bank."

8. The aforesaid letter makes it clear that deposit of Rs, 40 crores was to be maintained by the plaintiff and all the contract was to be executed entirely through the defendant Bank, but this aspect was never fulfilled by the plaintiff. The plaintiff, by letter dated 27.7.1992 promised to keep the trade

surplus with the defendant Bank but the second condition to execute all the contract through the defendant Bank was accepted, as there was no whisper with regard to this aspect in the plaintiffs letter dated 27.7.1992, but plaintiff failed to take care and abide by the assurance and promises with regard to deposit of Rs. 40 crores and execution of all the contracts through the defendant Bank. The bank guarantee was extended but not with the intention of free charges. The defendants denied that there was any such contract, but it is an adjustment and facility of bank guarantee to plaintiff MECON and this was allowed on the second promise of the plaintiffs to deposit of Rs. 40 crores and execution of the entire contracts through the defendant Bank, besides other clauses mentioned in the sanctioned letter. The plaintiff except margin money did not ever deposit its trade surplus in the defendant Bank. The facilities extended to the plaintiff by the defendant Bank was cancelled as the plaintiff completely failed to fulfil its promise to give deposits of even of its trade surplus and it also failed to execute its contracts through the defendant Bank. The plaintiff itself admit in para 15 that after the facilities were cancelled by the defendant Bank, plaintiff informed the Bank, vide its letter dated 9:3.1994 that now they would route the entire transaction in respect of the contracts through the defendant Bank. Since the plaintiff violated the promise and assurance, bank was justified in cancelling the facilities to the plaintiff. The Bank has never charged penal rate of interest for non-payment of commission for issuing bank guarantee on several dates. It is denied that FDRs deposited by the plaintiff was a general deposit, which was deposited by way of margin money. It was connected with the bank guarantee and since the plaintiff did not pay the commission towards the bank guarantee, the defendants rightly withheld the payment and until realization of the bank commission from the plaintiff. Hence a prayer has been made to dismiss the suit.

9. On the pleadings of the parties, the following issues were framed for their determination in the suit :

(i) Is the suit as framed maintainable?

(ii) Has the plaintiff valid cause of action for the suit?

(iii) Whether the plaintiff is entitled to a decree as prayed for?

(iv) To what other relief or reliefs the plaintiff is entitled to?

10. Issues were decided in favour of the plaintiff and against the defendant and suit was decreed.

11. While deciding issues framed, issue No. 3 was considered to be the main issue and this was decided in favour of the plaintiff, although other issues were also decided in favour of the plaintiff. Issue No. 3 was decided in the following words :

> "Having considered the entire facts and circumstances and evidence both oral and documentary and the submission made by the learned lawyer for the parties. I find and note that plaintiff is entitled to a decree as prayed for. I find that there is no formal contract or document incorporating all the terms and conditions settled between the parties. The correspondence between the parties together the terms and

conditions are for consideration. It is admitted fact that on 26.2.1992 discussions were held between the parties. The defendant, vide its letter dated 27.2.1992 (Ext. 1), confirmed the negotiation and accepted the proposal of the plaintiff. In the said letter the Regional Manager of the Bank wanted the plaintiff to give a proposal for the Bank Guarantee so that it should be placed before higher authority. In other words, there was a complete contract so far as the terms of giving instant credit of cheques without any charge, remittance to the out-station branches of the plaintiff would be given free of charges and remittance of cash to the office of the plaintiff at the cost of the defendants were concerned. But so far as furnishing of Bank guarantee by the defendant was concerned, the defendant wanted from the plaintiff a proposal. I further find that in response to the letter dated 27.2.1992 (Ext. 1), the plaintiff gave a proposal to the defendant by its letter dated 28.2.1992 (Ext. 2/B). By Ext. 2/B the plaintiff informed the defendant that they were considering to open a Bank account with the defendant about the Bank guarantee and the plaintiff requested the defendant to furnish Bank guarantee free of commission. I further find that plaintiff has applied for furnishing Bank Guarantee of Rs. 25 crores on 30.3.1992 (Ext. 3). By the said application the plaintiff moved a proposal and the defendant by its letter dated 14.7.1992 (Ext. 1/a), accepted the proposal of the plaintiff. It has been mentioned in Exhibit 1/a that limit of Bank guarantee would be 50 crores. No commission would be charged and Margin Money would be 10%. It has also been mentioned in the Exhibit 1/1 that the plaintiff should keep in deposit of Rs. 42 crores and the plaintiff should execute the entire contract through Bank. I further find that plaintiff, by its letter dated 27.7.1992 (Ext. 2/D), stated that the plaintiff could not ensure of keeping the deposit of the order mentioned in the letter but at the same time promised to keep the trade surplus from time to time with the Bank. I further find that defendant accepted the proposal of the plaintiff and in pursuant to the contract furnished three Bank guarantee aggregating 19.86 crores free of commission. Therefore, I find and hold that the defendant have no right to claim any amount towards Bank Commission for establishing the Bank guarantee on behalf of the plaintiff. I further find and hold that defendants are not entitled to withhold the payment of matured fixed Deposits receipts after their maturity period, if the same are not under lien or charge. I further find and hold that plaintiff is entitled a decree for sum of Rs. 87,23,609/- with interest at the rate of 21.75% per annum at quarterly, rests from the date of release of FDRs till the billing of the suit, pendente lite and future till the date of realization. This issue is decided in favour of the plaintiff and against the defendant.

12. While assailing the judgment of the learned Court below, the learned Senior Counsel for the appellant submitted that issues have not been properly framed and vague issues have been framed. The facts of the case are so clear that there was no difficulty in framing proper issue but it was not framed in clear words whether there was any concluded contract or not but the issue was framed like this whether the plaintiff was entitled to a decree as prayed for or not. Although this issue more or less covers the prayer portion of the plaintiff but it is not clear. Hence, it was, therefore, pointed out that Appellate Court has got power to frame issue, if materials are available on record and- give

finding after framing issue on the basis of materials available thereon. In , this connection, learned counsel pointed out that there is a provision under Order XLI, Rule .24, CPC for framing issues.

13. On the other hand, learned Senior Counsel for the respondents submitted that issues were framed by the learned Subordinate Judge and when the appellant was not satisfied with the issues framed, then proper course for the defendant-appellant was to move the Higher Court in revision and would have got proper issues framed but no such revision or appeal or whatever other remedy available to the appellant was resorted to and the issues, so framed, attained finality and such issues cannot be challenged at appellate stage.

14. From both the sides some provisions of law as well as some case laws have also been cited and I have gone through the provisions of law as well as those case laws, but at this stage it can only be said that under Order XLI, Rule 24-there is a provision that where materials are available on record then issues can be framed at the appellate stage and decided accordingly.

15. Learned Senior Counsel for the appellants has suggested some issues which appear to be proper and should have been framed. Accordingly, these issues are framed for determination in this appeal.

(i) Whether there was any concluded contract between the parties to issue bank guarantee to the plaintiff by the defendant free of any commission?

(ii) Whether the terms as stipulated by the plaintiff in its plaint at paragraph 10 as a consideration for the alleged contract of issuance of bank guarantee without charging any commission?

(iii) Whether the plaintiff has been able to establish the case of waiver of commission on bank guarantee?

(iv) Whether the learned Court below is justified in awarding the interest as has been given in the impugned judgment?

16. Issue Nos. I, II and III : All the three issues are interconnected with one another and are being taken up together for sake of convenience. The learned Court below, although did no frame any specific issue like these issues, but has decided the main issue as issue No. 3 and while assailing the judgment, the learned Senior Counsel for the appellants submitted that there was no contract which can be called as concluded contract between the parties by which appellants-defendants refused to waive the commission on issuance of bank guarantee and there is no such document before the learned Trial Court from which it can be gathered that the document has incorporated all the terms of contract for issuance of bank guarantee and waiving of commission on the same. The learned counsel referred to Section 101 of the Evidence Act and submitted that those, who allege existence of a contract, have to prove the same and for that onus lies on those persons, who allege such existence of contract. In this connection, learned counsel referred to Ext. 1 /A, which is a sanction letter dated 14.7.1992, which cannot be said to form a concluded contract between the parties. Besides Ext. B/9 was also referred, which proves that MECON had knowledge or MECON was aware of the fact that higher authority would rectify any proposal for issuance of bank guarantee and negotiation between

the parties was made at the stage of proposal, and counter proposal. It is clear from the evidence on record that appellant-defendant Bank never agreed to waive commission on the bank guarantee issued by it and further that there was no form to show that the bank entered into a contract with the plaintiff respondent to waive commission chargeable on issuance of bank guarantee.

17. In course of argument, learned Senior Counsel for the appellants referred to Sections 10 and 25 of the Indian Contract Act and submitted that contract was void for want of consideration, as there was no consideration. He further submitted that consideration is must in a contract. In this connection he has submitted that FDRs deposited by the plaintiff-respondent cannot form or take the shape of consideration for the contract and as such, for want of consideration the contract is void. According to learned Senior Counsel, consideration is must in the lawful contract and according to him, a proposal made by one of the parties and accepted by another party with consideration, then it becomes agreement and when an agreement becomes enforceable then it is a contract. In the instant case, since the agreement or contract is void of consideration, hence it cannot be said that there was a concluded contract and appellant-defendant was justified in deducting the commission from the FDRs kept by the MECON with the Bank. It was further pointed out that the plaintiff respondent did not fulfil the terms and conditions as promised by them and incorporated in the sanction letter and, therefore, bank had no option but to deduct commission from the matured FDRs of the plaintiff-respondent and future plaintiff respondent failed to keep its trade surplus with the bank and on the other hand the plaintiff-respondent kept its trade surplus with the Steel Authority of India Ltd. at higher rate of interest and thus, there was a violation on the part of the plaintiff-respondent in fulfilling the terms and conditions and the plaintiff-respondent further failed to honour its promise to route the transaction through the appellant bank, so far as contract with Steel Authority of India Ltd. Rourkela Steel Plant is concerned and, therefore the deduction as made by the appellant from the matured FDRs of plaintiff-respondent was justified. The learned Senior Counsel further advanced his argument that the banks has got lien over the FDRs of plaintiff-respondent kept with the bank, as the FDRs were kept in the nature of margin money and this margin money amounted as a collateral security and when the respondent failed to perform its part of the promise, the appellant-defendant had no alternative but to deduct the bank commission from the FDRs. In this connection, learned Senior Counsel referred to. Section 171 of the Indian Contract Act, which is quoted hereinbelow :

> "171. General lien of bankers, factors, wharfingers, attorneys and policybrokers.-Bankers, factors, wharfingers, attorneys of High Court and policy-brokers may, in the absence of a contract to the contrary, retain as a security for a general balance of account, any goods bailed to them, but no other person have a right to retain, as a security for such balance, goods bailed to them, unless there is an express contract to that effect."

18. Learned Senior Counsel further submitted that provisions of Section 171 of the Indian Contract Act provides for general lien of bankers and on breach of promise by the respondent the appellant-defendant was justified in deducting the commission from the FDRs of the plaintiff-respondent and the appellant-defendant did not commit irregularity in withholding the amount from the FDRs of the respondent kept with the defendant-Bank. Learned Senior Counsel

also assailed the judgment on the point of interest. According to the learned Senior Counsel, the learned Court below has allowed the interest @ 21.75% with quarterly rest which comes to about 60% or so but it was further submitted that Trial Court was not justified in granting interest at that very rate because that is against the provisions of Section 34 of the Code of Civil Procedure, 1908. It was further pointed out that on the point of interest there is actually no discussion and it has been allowed without any discussion whether the grant of interest at that very rate is justified or not or whether the plaintiff-respondent can charge that much of interest or not, but without any such discussion, the learned Court below, by one stroke of pen, allowed interest @ 21.75% with quarterly rests. The learned Senior Counsel further referred to several documents such as Exts. 1, I/A, 2/D, 1/B, 1/D and Ext. 3 and submitted that from perusal of these documents it would appear that there was no concluded agreement in between the parties and the proposal, which was invited by the defendant-appellant, was made by counter by the plaintiff-respondent and, therefore, there was no acceptance of-the proposal by the defendant-appellant as it was within the knowledge of the plaintiff-respondent that higher authorities were to take a decision on the point of providing bank guarantee without commission. It was also submitted that for establishing any concluded contract between the parties, there has to be an offer, acceptance and consideration and when a person pleads existence of contract, he has to prove the same and for that the aforesaid three ingredients are required to be proved and in the instant case plaintiff, who alleges that there was a concluded contract has failed to prove existence of all the three ingredients, as there was neither an acceptance nor there is any consideration. It was also pointed out that plaintiff respondent in paragraphs 4, 9 and 10 of the plaint has specifically pleaded a case for waiver of bank commission on the bank guarantee and as such onus is upon the plaintiff-respondent to prove its case for waiver. It is not secret that bank guarantee is issued and for that commission is charged on issuance of bank guarantee by the bank and the plaintiff-respondent has pleaded waiver/exception of the commission but from no where, either from oral evidence or from the documents of the parties, it will appear that plaintiff-respondent has proved waiver of commission on issuance of bank guarantee by the bank. Although plaintiff-respondent has argued that the letter dated 14.7.1992 (Ext. I/A) is same, which was received by MECON vide letter dated 27.7.1992 {Ext. 2/D), where they have themselves refused to accept the condition of letter dated 14.7.1992 and they have mentioned in that very reply that they cannot keep the deposit of the order mentioned in the letter dated 14.7.1992 to promise to keep the trade surplus with the bank from time to time and as such plain-' tiff-respondent has failed to make out a case of waiver of bank guarantee/commission by the appellant-defendant and bank has rightly charged bank guarantee as per norms and practice, and in that view of the matter the appeal is fit to be allowed.

19. On the other hand, learned Senior Counsel appearing for the plaintiff-respondent submitted that impugned judgment does not require any interference on the ground that learned trial Court has carefully scrutinized the oral and documentary evidence and after considering the facts and circumstances of the case decreed the suit in favour of the plaintiff-respondent. The learned counsel further submitted that there was a concluded contract according to Section 8 of the Indian Contract Act, which may be quoted hereinbelow :

> "8. Acceptance by performing conditions, or receiving consideration.-Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal

promise which may be offered with a proposal, is an acceptance of the proposal."

20. Learned Senior Counsel further submitted that from perusal of this section, it will appear that correspondence between the parties lead to the inference that there was a concluded contract. Learned Senior Counsel referred to the correspondence between the parties and in this connection he referred to the dates and exhibits of the parties before issuance of the bank guarantee and submitted that sanction letter (Ext. I/A) does not consider a concluded contract, but this is a result of the letters exchanged between the parties prior to the issuance of bank guarantee. He was of the opinion that sanction letter (Ext. 1 /A) along with letter dated 27.7.1992 (Ext. 2/D) and other letters of communication prior to the issuance of the bank guarantee when read together then terms and conditions of the bank guarantee could be derived from the same. He was also,of the opinion that all the documents exhibited before the trial Court are the admitted documents of the parties. He referred to Ext. 1/G, which is a letter dated 20.2.1992, which was written by Regional Manager of the appellantdefendant to the General Manager (Finance) of the plaintiff-respondent for opening of account with the appellant bank and pursuant to that discussions were held on 26.2.1992 and on 27.2.1992 (Ext. 1/G), and defendant-Bank wrote a letter to the General Manager (Finance) for the facilities to be provided to the plaintiff-respondent by the defendant-appellant. On 28.2.1992 (Ext. 2/D) Controller of Finance and Accounts of the plaintiff-respondent wrote to the Regional Manager of the defendant-appellant that bank guarantee commission, if any, chargeable on the bank guarantee may be waived, since respondent's clients are mainly comprised of public sector undertakings and Government's units and on 5.3.1992 (Ext. B) the Regional Manager of the appellant wrote to the Deputy General Manager (Zonal Office) regarding issuance of bank guarantee free of commission. It was mentioned therein that on 10% margin money the bank guarantee should be made available free of any commission and prior to any formal proposal from respondent the appellant may agree in principle to the same and in turn the bank may expect a deposit of Rs. 25 to 30 crores from respondent. Through letters dated 24.3.1992 (Ext. C) and 30.3.1992 (Ext. 3) respondent filed applications for issuance of bank guarantees of the value of Rs. 25 cores each and on 10.4.1992 (Ext. B/9) Finance Manager of the respondent wrote to the Branch Manager of the appellant for issuance of bank guarantee to various clients of respondent and vide letter dated 7.5.1992 (Ext. 2/B) the Finance Manager of the respondent wrote to the Regional Manager of the appellant that respondent has received letter of intent from Steel Authority of India Ltd. Rourkela Steel Plant for a project of the value of Rs. 360 crores, for which bank guarantee is required to be furnished aggregating to Rs. 50 crores and for that the necessary approval for raising the bank guarantee upto Rs. 60 crores may be allowed and respondent also informed that it is opening an account with the appellant bank, Rourkela Branch but the bank guarantee shall be obtained from Doranda Branch of the appellant Bank. It was further clarified in the letter that transaction for this job shall be routed through the Doranda Branch. By Ext. B/8 dated 14.5.1992, the Regional Manager of the appellant bank was intimated about the cost benefit analysis prepared by the officials of the appellant and subsequently on 28.5.1992 the General Manager, Finance of the respondent was communicated of sanction of various enhanced limits of banking facilities by the Manager, Doranda Branch of the appellant and on 14.7.1992 a sanction letter (Ext. 1/A) was issued by the appellant and in this very letter the appellant has specifically stated that the limit of the bank guarantee would be Rs. 50 crores and the commission charged on the same will be nil and margin money to be kept with the appellant would be 10% of the value of bank guarantee and period of bank guarantee would be

one year/tenure of the contract. This sanction letter was accompanied by an forwarding letter in which appellant-bank stated that in lieu of the facilities to be provided by the bank, the appellant-bank expects a deposit of Rs. 42 crores and also expecting that the transaction with the Steel Authority of India Ltd. with regard to the contract with Rourkela Steel Plant would be routed through the appellant. But by Ext. 2/D dated 27.7.1992 the General Manager (Finance) of the respondent intimated the Branch Manager of the appellant that it was not possible for the respondent to keep the deposit of the order mentioned in the sanction letter dated 14.7.1992 but promised to keep its trade surplus from time to time with the bank and in reply to this, bank did not respond to the letter dated 27.7.1992 (Ext. 2/B) and remained silent over this matter. The bank issued guarantees on 23-24.10.1992 but while issuing bank guarantee the defendant-bank did not rebut the offer or counter the proposal of the respondent. It was further submitted that in view of communications between the parties and if the same are read as whole, it will be crystal clear that the appellants agreed to issue bank guarantee to the limit of Rs. 50 crores without charging commission on the same but with 10% margin money to be deposited by the plaintiff-respondent with the appellant and the terms to be complied with by MECON was that it would keep trade surplus from time to time with the bank and it would route the transaction with regard to the contract with Reourkela Steel Plaint through the appellant-bank. In this connection, learned Senior Counsel further referred to Section 8 of the Indian Contract Act, which has already been quoted earlier and submitted that on application of Section 8 of the Indian Contract Act to the facts and circumstances of the case, it will become clear that the appellant bank performed the condition of the proposal of the respondent by issuing commission free bank guarantee and at the same time appellant bank did not reply to the Ext. 2/D and issued bank guarantee at a latter date on the request of the respondent and it is enough to show that the bank entered into a concluded contract with the respondent. It was further pointed out that the appellant bank would be estopped from claiming that they did not enter into any agreement with the respondent, as because they performing the condition of the proposal given by the plaintiff-respondent by issuing commission free bank guarantee accepted the margin money in lieu of the same and also agreed to the terms proposed by the plaintiff-respondent keeping its trade surplus with the bank and routing the transaction in regard to the contract with regard to the Steel Authority of India Ltd., Rourkela Steel Plant through the bank. In this connection reliance was placed upon AIR 1999 Delhi 18, State Bank of India v. M/s. Aditya Finance and Leasing Company Pvt. Ltd. and another, wherein it has been held that "it is now a settled law that contract can come into existence between parties by exchange of letters." In the instant case also the correspondences between the parties prior to the issuance of the bank guarantee form a concluded contract between them. It was further submitted that a concluded contract was reached between the parties by exchange of letters of communications between them before issuance of bank guarantee and terms and conditions of which may be derived from the date correspondences and on combining of the letter together, it becomes crystal clear that concluded contract was reached between the parties and the appellant accepted to issue the bank guarantee free of any commission.

21. The learned Senior Counsel for the appellant, in course of submissions, had submitted that there cannot be a contract between the parties for want of consideration and in this connection he referred to Sections 10 and 25 of the Indian Contract Act but repealing that argument the learned Senior Counsel for the respondent submitted that plaintiff-respondent had deposited more than

10% of the margin money with the bank because the bank guarantee limit was Rs. 50 crores for which MECON deposited Rs. 5 crores as margin money but appellant issued bank guarantee to the tune of Rs. 19.86 crores only as bank guarantee and thereafter terminated all the banking transactions with the respondent. It is an admitted fact that plaintiff-respondent had opened a current account with the bank and transactions through this account had taken 'place regularly and plaintiff-respondent did not receive any interest on the amount deposited in current account but bank circulated the money so deposited to its various customers at the lending rate prevalent at that time. It was also pointed out that appellant also earned profit through the margin money deposited with the appellant by lending it to various customers as per the normal banking practice and the difference between the deposit rate and the lending rate is the amount earned as profit by the bank and, therefore, it cannot be said that there was no consideration for the bank in entering into a contract with the respondent. It was also pointed out that prospect of future business is also a key consideration and consideration can be past, present as well as future. In this connection he placed reliance upon a case law reported in, AIR 1997 Bombay 225, Central Bank of India v. Tarseema Compress Wood Manufacturing Company and others, whereby Hon'ble single Judge of the Bombay High Court, while interpreting Section 25 of the Indian Contract Act, held that consideration can either be past, present or future and, therefore, it was submitted that consideration aspect was also present in the concluded contract between the parties and the same does not suffer for want of consideration.

22. The learned Senior Counsel, in course of submission, submitted that if defendant-appellant felt that plaintiffrespondent has committed breach of contract then instead of deducting any amount from FDRs should have approached the appropriate forum for breach of contract and claimed for loss or damages caused by breach of contract and compensation for failure to discharge obligations resembling those accrued on contract. In this connection he referred to Section 73 of the Contract Act and submitted that better course for the appellant-defendant was to take recourse of Section 73 of the Indian Contract Act, which is quoted hereinbelow :

> "73. Compensation for loss or damage caused by breach of contract.- When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be like- ly to result from the breach of it.
>
> Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.
>
> Compensation for failure to discharge obligation resembling those created by contract.-When an obligation resembling those created by contract has been in- curred and has not been discharged, any person injured by the failure to dis- charge it is entitled to receive the same compensation from the party in default, as if such person had contracted to dis- charge it and had broken his contract.

Explanation.-In estimating the loss or damage arising from a breach of con- tract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account."

23. The learned Senior Counsel fur- ther pointed out that the appellant-defen- dant deducted the claim of the respondent and that was not a debt and pointing out difference between claim and debt, the learned Senior Counsel submitted that a debt will accrue only when a claim is ad- judicated by legal means and resources. The learned Senior Counsel placed reliance upon the ruling, AIR 1993 SC 953, Purewall and Associates and Anr. v. Punjab Na- tional Bank and others, in which Hon'ble Supreme Court directed the bank to initiate proper legal proceedings for recovery of al- leged dues instead of taking any other coercive step against the debtor.

24. The learned Senior Counsel fur- ther submitted that in para 2 of the written statement appellant-defendant has claimed that commission on bank guarantee has been charged as per norms and practice of the banking system and it was for the ap- pellant-defendant to prove that the commission was charged as per the norms and practice of the banking system and if this was a case then plaintiff-respondent would have not received commission free bank guarantee or on a negligible commis- sion bank guarantee from other banks and, therefore, the claim that as per norms and practice bank guarantees are issued on commission does not hold good and, there- fore, learned Senior Counsel pointed out that (a) a concluded contract was reached between the parties; (b) terms and condi- tions of the concluded contract can be derived from the correspondences between the parties; (c) having regard to the above, it is clear that the bank issued bank guarantees free of any commission; (d) the concluded contract routed between the parties did not suffer any illegality or ir- regularity for want of commission; (e) the bank illegality, unilaterally and arbitrarily deducted bank commission on the guaran- tees ignoring the provisions of Section 73 of the Indian Contract Act; (f) bank guarantee commission cannot be charged by the ap- pellant on the basis of norms and practice.

25. The learned Senior Counsel for the appellant submitted that even if it be accepted that there was contract between the parties, the plaintiff-respondent did not fulfil the terms and conditions of the con- tract as incorporated in the correspondences between the parties.

26. The learned Senior Counsel for the respondent submitted that from the correspondences between the parties, the following terms and conditions can be derived :

(i) The bank would issue a bank guarantee of Rs. 50 crores;

(ii) MECON would keep 5% of the value of the bank guarantee issued;

(iii) The bank would not charge any commission on issuance of bank guarantee issued.

(iv) MECON would keep its trade surplus from time to time with the bank;

(v) MECON would route the transac- tion with regard to the contract with Rourkela Steel Plant with the bank.

27. Learned Senior Counsel further submitted that only three conditions were required to be fulfilled by plaintiff-respondent and they are to keep 10% of the value of margin money, they are to keep trade surplus with the bank from time to time and they are to route the transaction with regard to the contract with Rourkela Steel Plant through the bank and the plaintiff respondent has fulfilled all the three conditions, as it kept 10% of the value of margin money with the bank by depositing FDRs of the value of 50 crores, it kept trade surplus from time to time with the defendant Bank and also routed the transaction with regard to the contract with Rourkela Steel Plant through the bank. So far as the words "trade surplus" is concerned, the learned Senior Counsel submitted that it can only be assessed after end of the transaction and in this connection he has given definition of the words "trade surplus" as defined in Black's Law Dictionary, 6th Edition, page 1493, which means "excess of nation's imports over export (trade deficit), or exports over imports (trade surplus). He further pointed out that term excess of exports over imports can be safely interpreted to mean profit and profit can only accrue or can be calculated after the close of a transaction or the termination of transaction.

28. It was further pointed out that initial amount received by the plaintiff respondent from Steel Authority of India Ltd. was mobilization amount and the same could not be routed through the bank as Steel Authority of India Ltd. had requested the plaintiff-respondent to keep the said amount deposited with them and as such, plaintiff-respondent had no control over the said transaction because Steel Authority of India Ltd., being a principal party to the contract between the plaintiff-respondent and Rourkela Steel Plant, the plaintiff respondent had no other option but to keep the initial advance with Steel Authority of India Ltd. and the same fetched a higher rate of interest and it is also admitted by the parties that plaintiff-respondent had opened a current account with the appellant-bank through which regular transaction was taking place and, therefore, the contention that the plaintiff-respondent did not route the transaction through the defendant bank or did not do any transaction whatsoever with the appellant-bank is completely falsified.

29. The learned Senior Counsel for the respondent further submitted that rate of interest @ 21.75% with quarterly rests is justified rate of interest, which has been awarded by the learned Court below. The learned counsel further pointed out that the interest was awarded by the learned trial Court after proper appreciation of the facts and circumstances of the case and also in consonance with the relevant legal provision of Section 34 of the Code of Civil Procedure. He further pointed out that plaintiff-respondent in paras 34 and 35 of the plaint has stated the reasons for claiming interest @ 21.75% at quarterly rest and the said rate of interest was the lending rate of nationalized bank at the relevant time. He further submitted that there is no bar under Section 34, CPC to allow interest at such rate. He further submitted that Section 34 read along with the proviso and explanation makes it clear that the learned Court below did not transgress its jurisdiction and has rightly awarded interest at such rate. He further pointed out that the interest can be charged under Section 34, CPC, which is as under :

(a) Contractual rate of interest with method of compounding as per the contract but the bank or financial institutions cannot charge such rate or apply such method, if it is more than the notifications issued by Reserve Bank of India, The Notification issued by Reserve Bank of India have a overriding effect over contractual rates entered between the parties. -

(b) In case where the contract is silent on point of interest, then interest shall be charged as per the Interest Act.

(c) Powers of the Court under Section 34 of the Code of Civil Procedure is not fettered by the Interest Act or even by the contractual rate of interest as because the Courts being guided by the principles of procedural code as well as principles of equity may fix the rate which it finds reasonable in the facts and circumstances of each case as because the interest allowed by the Courts will have the following components : (i) Compensatory aspect; (b) penal aspect; and (c) deterrent aspect.

30. The contention of the learned Senior Counsel was that since the money kept with the bank was being given to other borrowers at the above mentioned rate and the appellant-defendant wanted to deprive the plaintiff-respondent of that rate of interest and, therefore, learned Court below was justified in granting interest at the aforesaid rate pendente lite and future.

31. On the basis of submissions made above, the learned Senior Counsel for the respondent has submitted that the judgment does not require any interference and this appeal is fit to be dismissed with costs.

32. Admitted facts, which emerge on perusal of oral as well as documentary evidence and after hearing the submissions of the parties, are that the appellant-bank requested the plaintiff-respondent by its letter dated 20.2.1992 (Ext. 1/G) for opening of a bank account with them and thereafter on 26.2.1992 discussions were held between the parties and on 27.2.1992 the appellant-Bank again sent a letter to the plaintiff-respondent intimating about the banking facilities to be provided to the plaintiff-respondent and on 28.2.1992 plaintiff-respondent sent a letter to the appellant-Bank requesting therein that bank guarantee commission, if any, chargeable on the bank guarantee may be waived since clients of the plaintiff-respondent are mostly of public sector undertakings and of Government's Units and on 5.3.1992 (Ext. B) appellant-bank sent another letter to the plaintiff-respondent regarding issuance of bank guarantee free of commission. It was also mentioned in the same letter that on 10% margin money the appellant-Bank may issue bank guarantee free of any commission and prior to its formal proposal the appellant-bank may agree in principle to the same. It was also mentioned therein that in turn thereof appellant-bank may expect a deposit of Rs. 25 to 30 crores in term deposit: or in any other form in its current account being opened within a day or two. In response of this letter, on 24.3.1992 (Ext. C) and 30.3.1992, the plaintiff-respondent filed applications for issuance bank guarantee of the value of Rs. 25 crores each and on 10.4.1992 (Ext. B/9) the plaintiff-respondent sent another letter to the Branch Manager, Allahabad Bank for issuance of bank guarantee to various clients of the plaintiff-respondent and vide letter dated 7.5.1992 (Ext. 2/B) the plaintiff-respondent sent a letter to the Regional Manager,

Allahabad Bank that plaintiff has received letter of intent from Steel Authority of India Ltd, Rourkela Steel Plant for a project of the value of Rs. 360 crores, for which a bank guarantee is required to be furnished aggregating to Rs. 50 crores and, therefore, necessary approval for raising the bank guarantee upto Rs. 60 crores may . be agreed upon. In the same letter it was mentioned that plaintiff-respondent is opening an account with the appellantbank, Rourkela Branch but the bank guarantee shall be obtained from Doranda Branch of the appellant-bank and in the same letter it was clarified that the transaction for this job shall be routed through Doranda Branch. On 14.5.1992 (Ext. B/8) the appellant-bank was intimated about the cost benefit analysis prepared by the officials of the appellant-bank. On 28.5.1992 the plaintiff-respondent was communicated of sanction of various enhanced limits of banking facilities by the Manager of Doranda Branch of the appellant and on 14.7.1992 (Ext. 1 /A) a sanction letter was issued by the appellant-bank wherein it has been specifically stated that the limit of bank guarantee would be Rs. 50 crores and commission charged on the same would be nil and margin money to be kept with the bank would be 10% of the value of bank guarantee and the period of bank guarantee would be one year/tenure of the contract. The sanction letter was accompanied by forwarding letter, in which it was stated that in lieu of facilities provided by the appellant-bank, the appellant-bank was expecting a deposit of Rs. 42 crores and was also expecting that the transaction with Steel Authority of India Ltd. with regard to the contract with Rourkela Steel Plant would be routed through the bank but thereafter on 27.7.1992 (Ext. 2/D). plaintiff- respondent intimated the Branch Manager of Allahabad Bank that it was not possible for the respondent to keep the deposit of the order mentioned in the sanction letter dated 14.7.1992 but ft would keep its trade surplus from time to time with the bank. Even after receipt of this letter the appellant-bank did not respond to the letter and on the other hand bank guarantees were issued on 23-24.10.1992 without rebutting the offer or without countering the proposal of the plaintiff-respondent and, therefore, if correspondences, entered into between the parties, are read as a whole, it will be crystal clear that the appellant bank agreed to issue bank guarantee to the limit of Rs. 50 crores without any commission on the same with 10% margin money to be deposited with it and the terms to be complied with by the plaintiff-respondent was to keep its trade surplus from time to time with the bank and it would route the transaction with regard to the contract with Rourkela Steel Plant through the appellant Bank. The letters of communication between the parties make it clear that there was a concluded contract between the parties because even after letter dated 14.7.1992 putting some conditions for issuing bank guarantee and thereafter a reply was given by the plaintiff-respondent to the appellant-bank that respondent will not be. able to keep Rs. 42 crores as expected by the appellant-bank and on the other hand assured to keep its trade surplus from time to time with the bank, the bank guarantee aggregating to Rs. 19.82 crores was issued and, therefore, the appellant-bank had accepted the proposal of the respondent-plaintiff by issuing bank guarantee.

33. It was contended on behalf of the appellant-bank that there are three ingredients of a valid contract and those are proposal, acceptance and consideration and in the instant case there is no con- sideration and a contract without consideration is void. But from perusal of communications through letters exchanged between the parties, it would appear that plaintiff-respondent was asked to deposit 10% margin money of the amount of the bank guarantee to be issued by the appellant-bank and the plaintiff-respondent deposited Rs. 5 crores, which is 10% of Rs. 50 crores and further that the respondent plaintiff had opened a current account and routed the transaction through the appel lant-bank shows that . there was consideration and therefore, in the facts o and

circumstances, it can well be said that there was a concluded contract and the bank, as per terms and conditions of the contract, had agreed to issue bank guarantee without any commission and consequently withholding of FDRs and thereafter releasing FDRs realizing bank commission is not justified.

34. Hence so far as the issue are concerned, such as whether there was a concluded contract or not, whether there was consideration or not and whether plaintiff respondent has been able to establish the case of waiver of commission of bank guarantee, all these issues are decided in favour of the plaintiff-respondent and against the defendants-appellants.

35. If for any reason the appellant Bank felt that the plaintiff-respondent has violated terms and conditions of agreement and contract, course was open to the appellant-Bank under Section 73 of the Indian Contract Act, which provides for compensation for loss or damage caused by breach of contract. It is an admitted fact that appellant-Bank issued bank guarantee aggregating to Rs. 19.86 crores on the request of the plaintiff-respondent on certain conditions and those conditions, as per case of the appellant-Bank, were not performed and thereby plaintiff-respondent committed breach of contract, but it appears that appellant-Bank resorted to Section 171 of the Contract Act where there is a provision of general lien of bankers, factors, wharfingers, attorneys and policy brokers and taking recourse to that very section commission at a particular rate on the FDRs deposited with the appellantbank was deducted from the FDRs and rest of the amount was returned to the plaintiffrespondent because in the instant case the contract was terminated by the appellantsdefendants and appellants-defendants had no right to exercise lien over the FDRs of the plaintiff-respondent and the plaintiffrespondent has succeeded in establishing the fact that appellant-bank had waived the commission on bank guarantee by issuing letter dated 14.7.1992 (Ext. 1/A).

36. Hence, in the facts ad circumstances of the case, all the issues that have been framed, such as issue Nos. 1, 2 and 3 ae decided against the defendantsappellants and in favour of the plaintiffrespondent.

37. Issue No. 4 : Challenging the impugned judgment on the findings of the learned Court below, on the point of interest, learned Senior Counsel for the appellants submitted that the learned Court below, without discussing anything has awarded interest @ 21.75% with quarterly rests and there is no discussion in the impugned judgment as to why and how plaintiffrespondent was entitled to interest pendente lite and future @ 21.75% from the date of maturity till the realization, ignoring the provisions of law, as envisaged under Section 34 of the Code of Civil Procedure. The points raised by the learned counsel for the appellants have been discussed in para 18 of this judgment.

38. On the other hand, learned Senior Counsel for the plaintiff-respondent justified the grant of interest @ 21.75% with quarterly rests and the ground for justifying the grant of interest, at this very rate, have been discussed in para 29 of this judgment.

39. It is an admitted fact that there was no agreement so far as payment of interest in concerned. It is also an admitted fact that even after maturity of the FDRs payment of the matured amount was

not paid to the plaintiff-respondent but natural. When money is withheld illegality or arbitrarily, as in the instant case, the person or institution, which has illegally withheld payment of the money, is, required to pay interest. According to Section 34. CPC, in a case of commercial transaction the rate of interest may be more than 6% but it will not be more than the contractual rate or where there is no contractual rate, the rate at which money is lent or advanced by nationalized bank in relation to a commercial transaction. Here in the instant case, there was no contract with regard to payment of interest nor both the sides have brought on record the rate, at which money was being lent, by nationalized bank. But, since it has been found that appellant Bank has illegally and arbitrarily withheld the payment of money on FDRs even after their maturity, the main issue has been decided in favour of the plaintiff-respondent and hence appellants-defendants are liable to pay interest on the FDRs illegally and arbitrarily withheld. However, the rate of interest allowed to the plaintiff-fespondent @ 21.75% with quarterly rests is modified and is allowed to the FDRs, holder at the rate of interest, which is allowed to the FDRs' holder at that time on the date of maturity of the FDRs without quarterly rests and other terms will remain the same.

40. From the discussions made above, I am of the view that the judgment of the learned Court below does not require any interference in this appeal save and except the finding of this Court on the interest matter is concerned.

41. In the result, this appeal is dismissed with modification in the interest part. There will be no order as to costs.