

Reserved on : 26.03.2026

Pronounced on : 12.06.2026

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 12TH DAY OF JUNE, 2026

PRESENT

THE HON'BLE MR. JUSTICE D K SINGH

AND

THE HON'BLE MR. JUSTICE T.M.NADAF

WRIT PETITION NO. 24893 OF 2016 (GM-RES)

C/W

WRIT PETITION NO. 3120 OF 2018 (GM-DRT)

WRIT PETITION NO. 27021 OF 2019 (GM-DRT)

IN WP No. 24893/2016

BETWEEN:

TEXPORT OVERSEAS PVT., LTD.,
HAVING ITS REGISTERED OFFICE
AT NO.86, D-I, INDUSTRIAL SUBURB,
II STAGE, YESHWANTHPUR,
BANGALORE - 560 022.

REPRESENTED BY ITS
DIRECTOR
MR.SATISH KUMR GOENKA.

...PETITIONER

(BY SRI. BASAVAPRABHU S. PATIL. SR. ADVOCATE FOR
SRI. RAJESWARA P N., ADVOCATE A/W
SRI. H.R. NARAYANA RAO, ADVOCATE)

AND:

CANARA BANK,
A BODY CORPORATE
CONSTITUTED UNDER THE
BANKING COMPANIES
(ACQUISITION AND



TRANSFER OF UNDERTAKINGS)
ACT 1970 HAVING ITS
CIRCLE OFFICE AT
BANGALORE METRO,
BANGALORE.
AND HAVING ITS BRANCH OFFICE
(OVERSEAS BRANCH),
RAMANASHREE ARCADE,
3RD FLOOR, 18, M.G.ROAD,
BANGALORE - 560 001.

...RESPONDENT

(BY SRI. T.P. MUTHANNA, ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 & 227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE A WRIT OF CERTIORARI OR ANY OTHER WRIT, ORDER OR DIRECTION QUASHING/SETTING ASIDE FINAL JUDGEMENT DATED:18.04.2016 IN MISC. APPEAL NO.32/2014 ON THE FILE OF HON'BLE CITY CIVIL JUDGE, BANGALORE AT ANNEXURE - 'A' AND ALLOW THE MISC. APPEAL NO.32/2014 IN TERMS PRAYED FOR AND ETC.,

IN WP NO. 3120/2018

BETWEEN:

1. TEXTPORT OVERSEAS PVT., LTD.,
A COMPANY REGISTERED UNDER
THE COMPANIES ACT,
HAVING ITS REGISTERED
OFFICE AT NO. 86, D-1,
INDUSTRIAL SUBURB,
2ND STAGE,
YESHWANTHPUR,
BENGALORE - 560 022.
2. SMT. NISHA GOENKA,
W/O. RAJAT GOENKA,
AGED MAJOR,
RESIDING AT NO.31,
VITTAL MALLYA ROAD,
BENGALURU - 560 001.

3. SMT. SHALINI GOENKA,
W/O. SAMEER GOENKA,
AGED MAJOR,
RESIDING AT NO.31,
VITTAL MALLYA ROAD,
BENGALURU - 560 001.

4. SATISH KUMAR GOENKA
S/O. DEVI PRASAD GOENKA,
AGED MAJOR,
RESIDING AT NO.31,
VITTAL MALLYA ROAD,
BENGALURU - 560 001.

5. M/S. KISHA PVT., LTD.,
A COMPANY REGISTERED
UNDER THE COMPANIES ACT,
HAVING ITS REGISTERED
AT NO. 86D-1,
INDUSTRIAL SUBURB,
2ND STAGE,
YESHWANTHPUR,
BENGALORE - 560 022.

...PETITIONERS

(BY SRI. BASAVAPRABHU S. PATIL. SR. ADVOCATE FOR
SRI. BRIJESH PATIL, ADVOCATE)

AND:

CANARA BANK,
OVERSEAS BRANCH,
AT NO. 18, M.G. ROAD,
BENGALURU - 560 001.

...RESPONDENT

(BY SRI. T P MUTHANNA., ADVOCATE)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND 227 OF THE CONSTITUTION OF INDIA, PRAYING TO QUASH THE FINAL ORDER DATED:04.01.2018 PASSED BY THE DEBTS RECOVERY APPELLATE TRIBUNAL AT CHENNAI IN R.A.NO.82/2017 AS PER ANNEXURE-A AND CONSEQUENTLY DISMISS THE SAID R.A.NO.82/2017 AND ETC.,

IN WP NO. 27021/2019

BETWEEN:

CANARA BANK,
OVERSEAS BRANCH,
NO.18 M.G. ROAD,
BENGALURU - 560 001.
REPRESENTED BY ITS
ASSISTANT GENERAL
MANAGER, AJITH KUMAR T.N.

...PETITIONER

(BY SRI. T.P. MUTHANNA, ADVOCATE)

AND:

1. MS. TEXPORT OVERSEAS PVT., LTD.,
A COMPANY REGISTERED
UNDER THE COMPANIES ACT
HAVING ITS REGISTERED OFFICE AT
NO.86 D-1, INDUSTRIAL SUBURB,
2ND STAGE, YESHWANTHAPUR,
BENGAOLURU - 560 022.
REPRESENTED BY ITS DIRECTOR
SRI. SATISH KUMAR GOENKA.
2. SMT. NISHA GOENKA,
W/O RAJAT GOENKA,
AGED MAJOR,
RESIDING AT NO.31,
VITTAL MALYA ROAD,
BENGALURU - 560 001.
3. SMT. SHALINI GOENKA,
W/O SAMEER GOENKA,
AGED MAJOR
RESIDING AT NO.31,
VITTAL MALYA ROAD,
BENGALURU - 560 001.
4. SRI. SATISH KUMAR GOENKA,
S/O DEVI PRASAD GOENKA,

AGED ABOUT 66 YEARS,
RESIDING AT NO.31,
VITTAL MALLYA ROAD,
BENGALURU - 560 001.

5. M/S. KISHA PVT., LTD.,
A COMPANY REGISTERED
UNDER THE COMPANIES ACT
HAVING ITS REGISTERED
OFFICE AT NO.86 D-1,
INDUSTRIAL SUBURB,
2ND STAGE, YESHWANTHPUR,
BENGALURU - 560 022.

...RESPONDENTS

(BY SRI.BASAVAPRABHU S. PATIL, SR. ADVOCATE FOR
SRI. BRIJESH PATIL, ADVOCATE FOR R1 TO R3 & R5,
R4 IS SERVED)

THIS WRIT PETITION IS FILED UNDER ARTICLES 226 AND
227 OF THE CONSTITUTION OF INDIA, PRAYING TO ISSUE
ANY WRIT ORDER OR DIRECTION TO SET ASIDE PORTION OF
THE ORDER DATED:04.01.2018 IN RA NO.82/2017 ON THE
FILE OF DEBT RECOVERY APPELLATE TRIBUNAL, IN SO FAR AS
DISALLOWING THE CLAIM OF INTEREST ON PRINCIPAL
AMOUNT VIDE ANNEXURE-A AND ETC.,

THESE WRIT PETITIONS HAVING BEEN HEARD AND
RESERVED FOR JUDGMENT, COMING ON FOR
PRONOUNCEMENT THIS DAY, JUDGMENT IS DELIVERED/
PRONOUNCED AS UNDER:

CORAM: HON'BLE MR. JUSTICE D K SINGH
and
HON'BLE MR. JUSTICE T.M.NADAF

CAV JUDGMENT

(PER: HON'BLE MR. JUSTICE T.M. NADAF)

These three Writ Petitions being W.P.No.24893/2016, W.P.No.3120/2018 by Texport Overseas Private Limited and others and W.P.No.27021/2019 by the Canara Bank, are in respect of the very same claim made by the Canara Bank in respect of 48 Forward Purchase Contracts¹ alleged to have been booked by M/s.Nisha Designs/ Texport Overseas Private Limited during the year 2008 i.e., booked between the period April 2008 and August 2008. Since the question involved in these petitions are common, all these petitions are considered and disposed of by this common order.

2. Since the consideration of W.P.No.3210/2018 has got a direct bearing on other Writ Petitions stated supra, the same is taken and considered as main matter and arguments were heard with the consent of both the parties in respect of the said matters which are considered

¹ FPC, for short

as arguments in respect of other two Writ Petitions as well.

3. The aforesaid Writ Petitions are filed for the following reliefs:

3.1 W.P.No.24893/2016 is filed seeking following reliefs:

- i) Call for records in Misc. Appeal No.32/2014 on the file of Hon'ble City Civil Court, Bangalore;*
- ii) Issue a writ of certiorari or any other writ, order or direction quashing/ setting aside final judgment dated 18/4/2016 in Misc. Appeal No.32/2014 on the file of Hon'ble City Civil Judge, Bangalore at Annexure-A;*
- iii) Allow the Misc. Appeal No.32/2014 in terms prayed for;*
- iv) Direct the respondent to pay the costs; and*
- v) Issue any other writ, order or direction as deemed appropriate by this Hon'ble Court, to meet the ends of justice.*

3.2 W.P.No.3120/2018 is filed seeking following reliefs:

- i) Issue any writ order or direction to set aside/ quash the final order dated 04.01.2018 passed by the Debts Recovery Appellate Tribunal at Chennai in R.A.No.82/2017 as per Annexure-A and consequently dismiss the said R.A.No.82/2017;*

- ii) Issue any other writ, order or direction as this Hon'ble Court may appropriate, to meet the ends of justice.*

3.3 W.P.No.27021/2019 is filed seeking following reliefs:

- i) Issue any writ order or direction to set aside portion of the order dated 04.01.2018 in RA No.82/2017 on the file of Debt Recovery Appellate Tribunal, in so far as disallowing the claim of interest of principal amount vide Annexure-A.*
- ii) Issue any other writ order or direction as this Hon'ble Court deems fit, just and proper under the facts & circumstances of the case, in the interest of justice and equity.*

4. The main contention and dispute is with respect to the claim of the Canara Bank in respect of alleged 48 FPCs booked by M/s.Nisha Designs which as per the Bank, taken over by the Texport Overseas Private Limited under which M/s.Nisha Designs is a sister concern, and by means of agreements entered into between them, the Texport Overseas Private Limited has undertaken to fulfill the obligation with respect to the FPCs booked by M/s.Nisha Designs after July 2007.

- 4.1 As contended by the Bank, the FPCs is a contract whereby the Bank/Dealer agrees in advance with a customer that it/he would pay to the customer, for every foreign currency tendered by such customer, in Indian rupees at an agreed rate (agreed as on the date of booking/ entering into the contract), irrespective of the prevailing exchange rate on the date of tender. The FPCs are booked/ entered into by the exporters to mitigate their risk due to fluctuation in the Foreign Exchange Rate. In terms of the present regulation governing the FPCs, the exporters are allowed to cover their risk for a maximum period of one year from the date of booking. In case of non-utilization of the said FPCs by the exporters, the same has to be cancelled and the resultant profit or loss shall be passed on/ borne by the exporters.
- 4.2 It is contended by the Canara Bank that from 01.04.2008, M/s.Nisha Designs, of which petitioners 2 to 4 herein were the partners, was taken over by petitioner No.1 - Texport Overseas Private Limited.

The fourth petitioner - erstwhile partner of M/s.Nisha Designs and Director of the first petitioner Company addressed a letter dated 25.04.2008 informing the Canara Bank that they have consolidated their business by way of taking over of running business of M/s.Nisha Designs. Further requested to transfer all Forward Contracts of Foreign Exchange (Exports) of M/s.Nisha Designs booked July 2007 onwards to the account of M/s.Texport Overseas Private Limited. It was further informed that the first petitioner was receiving exports proceeds from that month itself and they wish to square up the Forward Contracts of Foreign Exchange (Exports) of M/s.Nisha Designs booked from July 2007 and onwards. The copy of the agreement entered into between M/s.Nisha Designs and Taxport Overseas Private Limited was also forwarded to the Bank.

4.3 It is the claim of the Canara Bank that M/s.Nisha Designs booked 41 FPCs but did not honor its commitments, though the goods were exported and

foreign currency was earned. It was further contented by the Bank that the first petitioner who took over M/s.Nisha Designs, instead of utilizing the foreign currency earned by it by exporting the goods for discharging the obligation under the FPCs got credited foreign exchange to its Exchange Earners Foreign Currency account number 183324100099, resulting in outstanding of the 41 contracts booked by M/s.Nisha designs beyond the due date.

- 4.4 It was further contented that non-utilization and non-cancellation of these FPCs was finally noticed by the Bank in the year 2009 and a letter was issued by the Bank on 19.12.2009 furnishing the list of outstanding contracts in respect of FPCs and requested the first petitioner to cancel the contracts within 07 days, else the Bank shall be constrained to cancel the contracts and recover the resultant charges/loss from the first petitioner. Since the first petitioner Taxport has not honored the letter, the Bank having left with no alternative, cancelled all the 48 FPCs including 41

FPCs said to have been non-utilized by the first petitioner.

- 4.5 It was further contented by the Bank that the first petitioner instead of honoring the letter, approached the City Civil Court, Bengaluru under Section 9 of the Arbitration and Conciliation Act, 1996 in A.A. No.1071/2009 and obtained an *ex-parte* injunction against the applicant Bank from debiting the amounts to the current account of the first petitioner. Further the first petitioner filed a petition before this Court for appointment of an Arbitrator. Though the Bank opposed the said petition on the ground that there is no arbitration clause/agreement regarding the FPCs in the loan documents, this Court while allowing the petition, left the said question to be decided by the Arbitrator who has been appointed under the petition filed by the first petitioner, including the question of jurisdiction on the contentions stated supra.

4.6 The Bank having left with no alternative, filed an application before the Debt Recovery Tribunal, Bengaluru² in O.A No.742/2011 seeking the loss to an extent of Rs.14,55,60,750/- in respect of cancellation of 48 FPCs and the interest on the said amount for non-utilization and cancellation of the same within time despite the notice which is at Rs.4,85,54,190/-, accordingly, claimed a total sum of Rs.19,41,14,940/- as outstanding from the petitioners, who have been arrayed as defendants in the said application in respect of the above FPCs.

4.7 The petitioners appeared before the DRT and submitted their objections contending that the matter covered under the dispute before the DRT is the same matter before the Arbitrator and the proceedings are going on, wherein the applicant Bank is a party. It was further argued that the Bank as an arm twisting measure has stopped the credit limit

² the DRT, for short

granted by the Bank in respect of the first petitioner, subsequently cancelled the same.

- 4.8 The main contention of the first petitioner before the DRT was, they never booked 41 FPCs alleged to an extent of Rs.14,55,60,750/-, as such the Bank is not entitled for the claim of Rs.14,55,60,750/- along with interest of Rs.4,85,54,190/-, totaling a sum of Rs.19,41,14,940/-.
- 4.9 It was further contented that the claim made is barred by limitation. It was contended that M/s.Nisha Designs, which is even according to the Bank was the sister concern, which has been taken over was not made as a party, so also petitioner Nos.2 to 4 who are not the persons in the agreement (between M/s.Nisha Designs and Texport Overseas Private Limited) were unnecessarily added as parties to this *lis*. As such, the petition suffers both from non-joinder and mis-joinder of parties and sought to dismiss the petition. However, the main contention

remains regarding the non-booking of FPCs as contented by the Bank. The petitioners herein in the present petition i.e., W.P.No.3120/2018, who were arrayed as defendants 1 to 5 have stated that they had earlier booked FPCs and cleared entire outstanding and the same even admitted by the Bank that except these alleged 48 FPCs which is claimed by the Bank, as such there is no outstanding FPCs in respect of the petitioners.

4.10 It was further contented that even the Bank has stated that the petitioners are their renowned and esteemed customers. However, they made a false claim against the petitioner. It was also contented that insofar as the FPCs which were booked are as per the Rules and Regulations in writing and cleared, so far as these 41 claims of FPCs claimed by the Bank, nowhere there is a concluded Contract between the parties. As such, a false claim has been made by the Bank. Accordingly, sought to dismiss the same.

4.11 The Bank in order to prove its case examined its officials as A.Ws.1 to 3 and produced 29 documents marked as Ex.A1 to A29. Ex.A1 was the affidavit of AW1, Ex.A2 is the list of documents and Ex.A3 to A24 are 22 documents as per Exhibit A2, Ex.A28 and 29 are the affidavit of AW2 and AW3, Ex.A25 is second list of document and Ex.A26 and 27 are two documents as per Ex.A25 and closed its side. The petitioners in order to substantiate their claim examined defendant No.4 i.e., petitioner No.4 herein as DW.1 and produced 45 documents, marked as Ex.D1 to D45. Among them, Ex.D1 is the affidavit of DW.1, Ex.D2 is the list of documents and Ex.D3 to D45 are the 43 documents produced in their favor.

4.12 Before the DRT, on three counts the Bank staked its claim. Firstly, on the Inward Register where the transactions booked by the petitioners were entered. Secondly, the Commission Payment Charges reflected in the register maintained in that respect. Thirdly, the CD of voice record of the one Mr.Dinesh

Singh, who according to the Bank, is an employee of the petitioners, who booked these FPCs on behalf of the Company. These three grounds were challenged by the petitioners contending that the records stated as per the register i.e., Inward Register are not in respect of the 41 FPCs. The Commission charges reflected in the register are not at all concerned with the petitioner as they are made in respect of some other concern. So far as CD of voice record is concerned, the same was denied that there is no compliance of Section 65B of the Indian Evidence Act, so also denying the fact that said Ms.Dinesh Singh, the alleged employee of the petitioners booked FPCs with the Canara Bank on their behalf.

4.13 The DRT upon consideration of the entire materials, evidence and the rival submissions of the parties, concluded that the Bank has failed to prove its case and dismissed the petition, so also the counter claim filed by the defendants. We are not discussing here the counter claim made by the petitioners, since the

said part was not at all challenged by the petitioners and accepted the same.

4.14 The DRT to answer the claim of the parties framed following points for consideration and answered both the points in negative against the bank.

"Point No.1: Whether the Applicant Bank establishes that the Defendants are liable to pay the OA amount as sought by the Appellant Bank?"

Point No.2: Whether the Defendants prove their case regarding counter claim and the Defendants are entitled for amount under counter claim, as contended by them?"

Point No.3: What order?"

4.15 The DRT has reasoned that in the teeth of admission by the witnesses of the Bank that the FPCs booked shall be in writing and shall be concluded at Overseas Branch and the said materials are available with the Overseas Branch, but not produced before the DRT, the Bank has failed to establish its case. Further, the DRT drawn an adverse opinion against the Bank for non-examination of the concerned party, who is responsible for entering the records in both the

registers on which entire case of the Bank rested i.e., the Inward Register as well as the Commission Register, maintained by one Mrs.Vijaya Kamath, who has been examined as RW.1 before the Arbitral Tribunal. The DRT has recorded the evidence of said Mrs.Vijaya Kamath which was produced as Ex.D44, at page No.54 of its judgment as under.

"The Ld. Counsel appearing for defendants further contends that, as admitted by AW1 and DW2, one Mrs.Vijaya Kamath was working as an Officer at the Overseas Branch of the applicant Bank and she was in charge of the Export-Import Desk, including booking FPCs during 13/6/2003 to 8/12/2009. Said Vijaya Kamath was examined as RW1 before the Arbitral Tribunal in connection with the dispute in question. Her examination-in-chief is marked before this Tribunal as Ex.D44. Her cross examination is marked as Ex.D.23(c). In her cross-examination said Mrs.Vijaya Kamath as RW1 stated before the Arbitral Tribunal that:

- a) For booking any FPC the Defendant No.1 used to handover papers/ application with required details (Ans to Q.5 before Arbitral Tribunal).*
- b) For every FPC booked, the applicant used to provide confirmation by giving a contract note containing details of rate, amount booked and*

delivery period (Ans to Q.20 and 23 before Arbitral Tribunal).

c) For every FPC booked the applicant used to take confirmation from the defendant, in the form of signed contract note and signed statement of FPCs (Ans. to Q.24, 25, 26, 46 before Arbitral Tribunal).

d) All FPCs were always booked against confirmed export orders or LCs (Para 5 of examination and Chief and answer to Q.122 in Cross examination, of RW1 before Arbitral Tribunal)."

4.16 However, the said witness who was a material witness was not examined before the DRT. The DRT was of the opinion that perhaps the said witness was not examined only to avoid any test in the cross-examination by the defendants, as such has taken an adverse opinion against the Bank for not examining the material witness responsible for the said entries as contented by the appellant Bank itself.

4.17 The DRT has further reasoned that the applicant - Bank has not produced any procedure which the Bank has adopted so far as booking the FPCs over

telephone in its other branches. Nothing of such sort which was contented in the claim petition made before the DRT has been produced. Even the documents which were produced such as the Inward Register and Commission Payment Register will not come to the aid of the Bank to prove that the petitioners have booked these FPCs through Mr.Dinesh Singh, who is alleged to be the employee of the petitioners. The said reasons of the DRT finds place from Page No.61 and ends at Page No.71, which reads as under:

xx"Therefore, in the light of specific denial of the defendant No.1 having applied for, having received confirmation for having booked the FPCs or having issued confirmation as regards the disputed contracts (FPCs) in respect to 48 disputed FPCs, heavy burden lies on the applicant bank to prove that the alleged 48 FPCs were in fact booked by defendant No.1/Nisha Designs as alleged by the applicant bank in the OA. In other words, to prove its case the applicant-bank has to produce relevant and material documents which are the foundation/basic documents that are mandatorily and compulsorily required to be obtained for the purpose of booking and concluding of contracts-

FPCs by the defendant No. 1/Nisha Designs, even as per the laid down procedure of the applicant bank and even as admitted by AW.1 to AW.3 in their cross. At the outset, it is to be stated that, conspicuously it is not so on with the part of the Applicant Bank. Therefore, in this case material and important documents are not produced by the Applicant Bank. On the basis of it, not only adverse inference is to be drawn but also it is to be held that a serious and higher degree of improbabilities emerge referring to alleged transactions of Applicant Bank falls under the category of serious doubt.

It is also relevant to place on record that, even according to the admissions of AW.1, AW.2 and AW.3 during the course of cross-examination of these witnesses, wherein all the three witnesses have admitted that Forward Purchase Contracts (FPCs) used to be concluded in writing. Even Smt.Vijaya Kamath who was examined before Arbitral Tribunal, who was serving at the relevant point of time in the Overseas Branch, including booking of FPCs, clearly admitted in the cross that the above referred documents are material, important and relevant documents in respect of booking of contracts - FPCs. Besides that, even AW.2 and AW.3 admitted that the FPCs used to be in writing only and used to be concluded at the Overseas branch of the applicant bank and the FPCs/ Contracts are available with the Overseas Branch of the Applicant Bank. Added to it,

admittedly each FPC is separate contract and 48 FPCs are of various maturity dates and they are different contracts and relevant documents shall be in the custody of Overseas Branch of the applicant bank only. Therefore, the applicant bank is duty bound to obtain and produce the relevant documents which reflect written consent/confirmation of defendant No. 1/Nisha Designs in respect to disputed FPCs which admittedly are available with the Overseas Branch of the applicant bank. In other words, The applicant bank shall produce all the relevant and supporting documents in respect to the disputed FPCs in question, viz. i) booking request application submitted by defendant No. 1/Nisha Designs, ii) acknowledgment for having issued confirmation/contract note to defendant No.1/Nisha Designs, iii) signed confirmation (Contract note or statement) issued by defendant No.1/Nisha Designs; and iv) confirmed export orders/ LCs, pertaining to all the disputed 48 FPCS, 10 corroborate the oral evidence of AW.1 to AW.3 and to prove that the said disputed FPCs were booked by: M/s. Nisha Designs/ Defendant No.1-Company.

But, unfortunately for the reasons best known to it, in the present case the Applicant-Bank has failed to produce any of the said vital documents pertaining to the disputed 48 FPCs in question to establish that Defendant No. 1/Nisha Designs has booked the disputed 48 FPCs in

question. Even no reasons are assigned by the Applicant-Bank even symbolically also as to why the Applicant-Bank has not produced those relevant material and important documents, though all the witnesses of the applicant bank clearly admit that they (documents) shall be obtained and are available with the Overseas Branch of the applicant bank where the contracts-FPCs will be concluded in writing. It is also relevant to place on record that huge amount is involved in these transactions (FPCs) but casual approach by the Applicant Bank dislodges its claim sought in this case.

Added to it, even according to the Ld. Counsel for the applicant bank (para x of Written arguments) as per the - established practice followed between the applicant bank and the Defendant No.1-Company, the defendant-company used to deliver such contracts/FPCs by quoting it under covering letter bills/encashment of inward remittances in foreign currencies/encashment of pre-shipment credit availed in foreign currency, which fact also clearly establishes that FPCs used to be supported by relevant documents as stated therein; and as such the Applicant-Bank ought to have produced the said relevant material documents in respect to the 48 disputed FPCs especially in view of the fact that the initial burden of proof undoubtedly lies on the applicant bank to prove that disputed FPCs have been booked by Defendant No. 1/Nisha

Designs. But, despite the said factor, the applicant bank has produced only the original documents executed by Defendants Ex.A3 to A13, which pertain to creation of security/guarantee by Defendants No.2 to 5 and those documents are in no way related to the booking of disputed 48 FPCs by defendant No.1/Nisha Designs. Hence, the said original documents produced by the applicant bank are not at all relevant for adjudicating and determining the dispute as to whether Defendant No.1NiSha Designs has booked the disputed 48 contracts-FPCs or not. Hence, - those documents do not help to the case of the Applicant-Bank as far as the aspect of booking of these FPCs by defendant No.1/Nisha Designs is concerned.

In this case, it needs to be placed on record that, conspicuously, the Applicant-Bank has not produced any of the aforementioned material and important documents which are admittedly in its custody, which reflect written consent confirmation of booking of FPCs by Defendant No. 1/Nisha Designs and to prove that Defendant No.1-Company has booked the disputed 48 contracts (FPCs) as contended by the applicant bank, hence, adverse inference has to be drawn against the Applicant-Bank as provided under Section 114 of the Evidence Act. Added to it, the principles laid down in the aforesaid rulings relied upon by the Ld. Counsel for Defendants in this regard are aptly applicable to the case on hand, as a result on the basis of said principles the contention of the

Defendants that on account of withholding of said material documents by the applicant bank pertaining to disputed FPCS and or failure of the applicant-bank in production of relevant material records admittedly in the custody of the bank attracts adverse inference to be drawn against the applicant bank has to be accepted, and thereby adverse inference is drawn against the applicant bank.

At the same time, it is relevant to note that, on the other hand, the applicant bank has produced and relied upon documents in support of its case, viz., the Inward Reporting Register maintained at FD (Ex.A20) regarding the booking of FPCs, Ex A15, statement of current account of the Defendant No.1 which reveals the debiting of Commission/charges towards the FPCs booked. Ex.A19, (i.e., Forward Contracts Booking Register, maintained by the Overseas branch regarding booking of disputed FPCs and CD allegedly containing voice recording (Ex.A.25) of the employee/ representative of Defendant No.1- Company and it is further contended by the applicant bank that said Dinesh Singh, alleged representative of the Defendant-Company was dealing with FD/ID of the Applicant and booking the contracts-FPCs.

In this regard it is relevant to note that, by more production of said alleged registers maintained by the Applicant Bank, it cannot be construed that they (registers) have been proved

by the Bank as required under law in the light of strong denial put forth by Defendants, unless the author/authors of these alleged registers maintained by the bank have been examined to prove the contents of those alleged two Registers. Contents of said registers have to be referred and explained in the pleadings of the OA and must be proved by examining the author/authors of said registers, but it is not done so. Added to it, it is pertinent to note that in all the registers/ documents produced and relied upon by the bank absolutely it is not mentioned that said Dinesh Singh was the representative of Defendant No.1-Company/Nisha Designs and he used to book the FPCs. The author/authors have to be examined referring to each page and each entry in the said Registers and proved as required under law, as mere production of the said registers in itself cannot become proof. But, it is not done so by the applicant bank. No single document is produced by the applicant bank to show that, said Dinesh Singh was employee/authorized representative of Defendant No.1-Company/Nisha Designs. Therefore, the claim of the Applicant-Bank that said person (Dinesh Singh) was booking FPCs appears to be imaginary as it is not borne out from the records, including the said Registers, ie. ExA.19 and A.20.

Even otherwise, the said documents/registers produced and relied upon by the Applicant-Bank in support of its case, viz., the

Inward Reporting Register maintained at FD (Ex. A20) regarding the booking of FPCs, Ex A15, statement of current account of the Defendant regarding the debiting of Commission/charges towards the FPCs booked. Ex.A19, i.e., Forward Contracts Booking Register, maintained by the Overseas branch regarding booking of disputed FPCs can be at the most considered as only circumstantial evidence and solely based on those documents it cannot be conclusively held that the disputed FPCs. have been booked by Defendant No. 1/Nisha Designs. The circumstantial evidence assumes its role provided direct evidence is placed, if not circumstantial evidence has to be ignored. In other words, in the absence of supporting/ booking request corroboratory documents such i) booking request/ application submitted by defendant No.1/Nisha Designs in respect to each of the disputed FPC, ii) acknowledgment for having issued confirmation/contract note to defendant No.1/Nisha Designs by the bank, iii) signed confirmation (Contract note or statement) issued by defendant No.1/Nisha Designs and iv) confirmed export orders/relevant LCs, in respect to all the disputed 48 FPCs, which is the material evidence to have effective: adjudication of the dispute as required under the Evidence Act, the said documents/registers in isolation cannot be considered as conclusive proof/ evidence in respect to disputed 48 FPCs in question. Added

to it, the aforesaid corroboratory documents are very much essential and are compulsorily required to be obtained and maintained by the applicant bank for the purpose of the contracts. Added to it, admittedly all the FPCs are always booked on confirmed orders or LCs and even the applicant witnesses specifically admitted during the cross that there were confirmed orders or LCs as regards the disputed 48 FPCs.

In these circumstances and in the light of admitted facts as noted above that whenever contracts (FPCs) are entered by the applicant bank it will always be in writing and relevant documents in respect to booking of the FPCs shall be available and in the custody of the overseas branch only, at best the said registers, allegedly maintained by the FD and Overseas Branch of the Applicant-Bank which allegedly contain the FPCs booked by several customers which is required to be kept for the day to day business transaction of the branch indicate and show existence of entries as shown therein and in the absence of supporting documents as stated above pertaining to said contracts/FPCs they (Registers) alone do not in any manner conclusively prove that the Defendant No.1/Nisha Designs has booked the FPCs in question disputed by the Defendant No.1/Nisha Designs against the confirmed orders/LCs. The other security documents produced by the Applicant-Bank are not relevant for determining

the issue as to whether Defendant No.1/Nisha Designs has booked the disputed 48 FPCs or not."

4.18 So far as claim of the Bank regarding the Commission Payment Charges maintained as per Ex.A15 and Ex.A25 CD containing vice recording are concerned, the DRT has given finding against the Bank holding that the Bank has failed to prove these documents. An attempt was made before the DRT by the Bank to contend that these documents are the circumstantial documents to prove the transactions. The DRT has rejected the said contention stating that in the absence of primary evidence, the evidence produced claiming as circumstantial evidence cannot be relied upon, without independent evidence of the trustworthiness, as such, cannot fix liability on the person relying on the judgment of the Supreme Court in **CHANDRADHAR GOSWAMI VS. GAUHATI BANK LIMITED**³ and **CBI VS. V.C.SHUKLA**⁴ placed

³ (1967) 1 SCR 898

⁴ (1998) 3 SCC 410

by learned counsel for the petitioners and held at page Nos.71 to 74 as under:

"The other evidence relied upon by the Applicant Bank is debit entry pertaining to commission/ charges, i.e., as per Ex.A15. In this regard, it is relevant to note that only basing on debiting of commission charges to the current account of Nisha Designs without production of further relevant and material documentary evidence by the bank to corroborate the said debit entry in the statement of account, i.e., written request and confirmation of booking of FPCs by Defendant No.1/Nisha Designs and other essential documents pertaining to booking of those FPCs, it cannot be held that disputed FPCs in question came to be booked by Defendant No.1/Nisha Designs; and merely based on such entries which appear in the statement of account liability cannot be fastened on Defendant No.1-Company in respect to disputed 48 FPCs. It is also relevant to note that debits were made only on 02.01.2008 and not on respective date/s though the disputed FPCs allegedly were booked on various dates and no reason is assigned by the bank as to why commission was not obtained on respective date/s in respect to each of 48 contracts since according to bank itself the branch also debits the current account after recording the booking of FPCs. Absolutely, there was no difficulty for the bank to do so. If not the bank shall come forward to

explain as to why it has not done so on respective dates in respect to each of 48 disputed contracts-FPCs.

Further, since the said debit entries pertaining to commission in respect of disputed FPCs are strongly disputed by Defendant No.1 and even defendants allege that the said document is created for the purpose of this case, etc, it becomes the bounden duty of the applicant bank to produce corroborative documentary evidence in support of said debit entries as existence of said entries in statement of account along will not be sufficient to fasten liability on Defendant No.1 in respect to disputed 48 FPCs and to allow the present OA as sought by the applicant bank. But, it is not done so by the applicant bank. No reason is also assigned as to why such a course is not adopted by the bank to produce relevant corroborative evidence in support of said entries as required under Section 34 of Evidence Act. In this regard, the Ld. Counsel for Defendants has relied upon the rulings reported in :

(1967) 1 SCR 898 pertaining to the case of Chandradhar Goswami v. Gauhati Bank Ltd., and

(1998) 3 SCC 410, para 34 to 39 pertaining to the case of CBI v. V.C.Shukla.

In the said rulings it is clearly held that, "even correct and authentic entries in books of account cannot without independent evidence of their trustworthiness, fix a liability upon a person."

Therefore, in the present set of circumstances of the case, and by virtue of the principles laid down in the aforesaid rulings relied upon by the Ld. Counsel for the Defendants, said entries reflected in the statement of account do not help much to the case of the applicant bank to prove that disputed FPCs in question have been booked by Defendant No.1/Nisha designs and thereby to fix the liability on Defendant No.1 as sought by the applicant bank."

4.19 The DRT upon consideration of these contentions and the evidence has held that the Bank miserably failed to prove its case and in the teeth of RBI guidelines, head office instructions and Circulars which clearly mandate to cancel overdue contracts - FPCs within 07 days of its maturity, whereas the appellant Bank has allowed the same to be outstanding for a long period i.e., more than 01 year, held that the same is fatal to the case of the Bank as there is serious lapses on the part of the Bank in making said claim and even no corroborative evidence laid in that regard.

4.20 The DRT with its well considered order, dismissed the entire claim petition of the Bank for lack of evidence by the Bank and concluded that the Bank is dealing with public money, must act according to the provisions guided under the Act, Rules, Guidelines of RBI, internal circulars of Bank itself, and not on alleged practice/tradition adopted by the branch/bank. In the case on hand, the practice as alleged by Bank prevailing the concerned branch cannot be recognized in the eye of judicial forums and observed that in the absence of a concluded contract which is admitted evidence of the witnesses examined by the Bank itself, held that the claim of the Bank is not sustainable in law and dismissed the entire case of the Bank holding that there were no booking of FPCs as claimed which has caused loss to the Bank, as claimed in the petition.

5. In the interregnum, the Arbitral proceedings initiated by the petitioner was dismissed by the Sole Arbitrator holding that in view of absence of arbitration

clause, the arbitrator has no jurisdiction to dwell upon the matter which was the subject matter of an appeal before the City Civil Court in M.A.No.32/2014 filed under Section 37(2)(a) of the Arbitration and Conciliation Act, 1996. The City Civil Court upon consideration of entire material placed on record, dismissed the appeal filed by the petitioner No.1 against the Bank. The said order is the subject matter in W.P.No.24893/2016.

6. The Bank aggrieved by the order passed by the DRT, was before the Debt Recovery Appellate Tribunal, Chennai⁵ in R.A.No.82/2017. The DRAT upon consideration of rival submissions and the materials placed on record, has held that M/s.Nisha Designs was the sister concern of petitioner No.1 and the partners are the family members who took over the entire assets and liabilities of M/s.Nisha Designs with effect from 01.04.2008. Further observed that the Bank has issued letter regarding non-utilization and cancellation of FPCs beyond one year and requested

⁵ the DRAT, for short

to cancel the same within seven days, else the same be canceled by the Bank and the petitioners would be held responsible for the loss caused.

7. The DRAT observed that the DRT has placed unnecessary burden of proving that Mr.Dinesh Singh was not an employee of the petitioners, instead the burden should have been on the shoulders of petitioner No.1 Company to deny that Mr.Dinesh Singh was not its employee and he was not authorized by them to deal with the Bank in respect of booking the FPCs. Further, the DRAT has stated that in earlier contract also Mr.Dinesh Singh was the key person and responsible for Company and has held that for some lapses on the part of the Bank, which avoided to examine Mrs.Vijaya Kamath before the DRT, though she was examined before the Arbitrator, particularly when Banks are dealing with public money, having much responsibility for transparency and to work as per the Rules and established practices and observed that, it would not be proper to state that the representative of petitioner No.1 had collected information

from aforesaid persons, but did not finalize the FPCs, holding so, the DRAT has observed that the Bank had unnecessarily entered into an adventure by entertaining such oral instructions of the employee of petitioner No.1 Company. However, since the said transaction took place in record and in writing also, the DRT should not have brushed them aside and ignored in a casual manner.

8. The DRAT reasoned its finding in Paragraph No.11 which is as under:

"11. It is true that there is no documentary proof of booking of Forward Purchase Contracts in respect of aforesaid 43 transactions though entries have been reflected in Statement of Accounts on relevant dates. In such a situation, Appellant Bank should be held liable for any act or conduct of its Bank Officers Mrs.Vijaya Kamat as well as R1 Company should be held liable for act and conduct of its representative Dinesh Singh. None of them have been examined by the PO of DRT by respective parties. R1 borrower Company suppressed its representative Dinesh Singh and R1 started asking the Bank to prove the relationship between R1 and its representative. This is not fair."

9. The DRAT further observed that the act and conduct of the Bank official Mrs.Vijaya Kamath was

equally doubtful as the act and conduct of representative of borrower company i.e., Mr.Dinesh Singh. On the basis of reasons stated supra, the DRAT concluded to hold that the Bank has proved its case for claiming damages, however not entitled for interest in its order at paragraph Nos.13 to 15 which reads as under:

"13. Something wrong done by the Bank Officer or by the representative of R1 Company alone will not make any profit and prejudice to any party. In such a situation, entries found place in Statement of Account will be believed in so far transaction is concerned. But in so far as procedural aspect is concerned, these are suffering from some lapses. In such a situation, PO of DRT had erred in dismissing the entire O.A. Rather, evidence should have been appreciated in a wider perspective. In view of the relationship of the borrower and the Bank in respect of both firms and of the transactions, then, it becomes clear that O.A of the Bank should have been decreed on the basis of Statement of Account filed by the Bank.

14. At the worst, Appellant Bank should have suffered the claim of interest, because the then Bank Officer did not act in prudent and competent manner in favour of Bank. In such a situation, Bank is bound to lose the interest on the money.

15. Accordingly, O.A. should have been and is hereby allowed in respect of principal amount

that has been proved on the basis of Statement of Account. O.A. should have been and is hereby dismissed for interest."

10. Assailing the order of allowing the appeal and directing the petitioner to pay the damages claimed, the Taxport Overseas Private Limited with its Directors are in petition in W.P.No.32120/2018. The Canara Bank is in petition in W.P.No.27021/2019 challenging the order passed by the DRAT only to the extent of denying interest.

11. Heard Sri.Basava Prabhu S.Patil, learned Senior counsel assisted by Sri.Brijesh Patil, learned counsel for the petitioner Company and Sri.T.P.Muthana, learned counsel appearing for the Canara Bank.

12. Sri.Basava Prabhu S.Patil, learned Senior counsel with all humbleness submits that the DRAT in an haste without properly considering the materials placed on record, set aside the well reasoned detailed order passed by the DRT with all painstaking with reference to all the documents produced and answering all the contentions put forward by the Bank in the teeth of admission by the

witnesses of the Bank itself, which has gone against the case claimed by the Bank.

12.1 Learned Senior counsel submits that the FPCs as per the Banking Regulations shall be in writing, which is unequivocally admitted by all the witnesses. Further it was admitted by all the witnesses that there is no such concluded contract in respect of FPCs between the Bank and M/s.Nisha Designs. The DRAT casted negative burden on the petitioners by holding that the burden should have been on the petitioner to prove that Mr.Dinesh Singh is not their employee, in the absence of any proof that the said person has been authorized by the petitioners, by means of Resolution or order or authorization to deal with the Bank on behalf of the petitioners in booking the FPCs as claimed and contented by the Bank. In the absence of such a document and pleadings and discharge of initial burden in that regard, there cannot be any negative burden on the petitioners. The question of proving the said person is not the

employee comes only when the Bank pleads by pleading and producing cogent evidence in that regard to contend that the said person has been authorized by the petitioner to deal with them in respect of the FPCs on behalf of the petitioners. In the absence of such records, the DRAT has toppled the entire well reasoned order passed by the DRT. There is absolutely no evidence with respect to the claim made by the Bank with regard to the alleged FPCs, in the teeth of admissions by witnesses - AW.1, AW.2 and AW.3, which reads as under:

"The respondent's main witness Padmapriya R -AW1 had no personal knowledge about the alleged transaction. Said Padmapriya /AW1 never dealt with M/s. Nisha Designs or petitioner No. 1 in any capacity at any point of time much less during the period when the disputed 48 FCs are alleged to have been booked. She mechanically reiterated the averments in the original application and marked Ex.A1 to A25(a) to (h) In her cross examination AW1 admits:

"It is true to suggest that Forward Purchase Contract (FC) of def.No.1 were dealt by one Mrs. Vijaya Kamath at the relevant point of time. I have no personal knowledge regarding transactions i.e., FC. I am not able to

depose regarding FC in question which have been claimed in the present OA. On the basis of the pleadings of the OA as a principle officer of the bank/ have filed my affidavit by way of evidence in this case. Present OA comprises of 48 FCs.../ have not gone through the paper book of OA filed by the bank.... The bank produced documents available with the bank...It is false to suggest that the person who has got full knowledge about the transaction in question is avoiding to come to tribunal in this case and face the cross examination intentionally"

AW1 further admitted:

"Present OA comprises of 48 FCs. The said transactions have taken place in different dates and they are all different transactions...It is true to suggest that once quote obtained from International Division, the Contract will be finalized with the overseas branch. ...It is true to suggest that 48 FCs stated in OA will have separate document of contract. ... / cannot comment to a suggestion as to whether 48 contract have been booked by def.No.1 and Nisha Designs. Witness volunteers that witness is not working at the relevant point of time. I have no idea who would be competent and official witness to speak the said FCs mentioned in OA.

AW2 Mr. Mohan Bhat claimed to have worked as an Officer at the Foreign Department of respondent Bank during the relevant period (1/6/2005 to 3/6/2008), in cross examination made the following statement:

"... Now presently said Mrs. Vijaya Kamath is working at Chandralayout Branch, Bangalore. Said

Mrs. Vijaya Kamath during 2006-08 was working as Export Section Officer and she was dealing with present transactions like on hand.... / am not the person dealt with documents in respect to FC i.e., booking of FC in the overseas branch. Said Mrs. Vijaya Kamath booked FC contract in overseas branch on behalf of the def.No.1 and Nisha Designs ie., at their instance...."

AW2 further stated:

"It is true to suggest that FC is a contract. It is true that said FC is contract between overseas branch and customers i.e., exporters. The FC contract will be concluded at branch level only.... Pertaining to said 48 FCs, relevant documents shall be in the custody of overseas branch only.It is false to suggest that def.No.1 and Nisha Designs have not entered into contract of FC with the branch. It is false to suggest that the present 48 transactions were not entered into by def.No.1 and Nisha Designs. Witness volunteers that all contracts are available with the overseas branch. It is true to suggest that whenever contract will be entered by the bank it will be always in writing...."

AW2 was examined before the Arbitral Tribunal as RW2. He accepted / admitted the affidavit and the statements made by him in cross-examination before the Arbitral Tribunal as Ex.D43 and Ex.D23B, respectively.

One Ravi Kumar who at the relevant time worked as Foreign Exchange dealer at International Division Mumbai was examined as AW3. His examination-in-chief and the statement

made in cross-examination are marked as Ex.D40 and D23. In his cross-examination AW3 stated:

"It is true to suggest that forward purchase contract limit was granted by Overseas Branch. Documentation in respect to the limit will be dealt by branch only. I am not concerned with the Overseas Branch. I have no personal knowledge regarding the documents obtained by the bank in respect of limit i.e., Forward Purchase Contract (FC).... Each transaction will have will have different contract. FC Contract will be between Overseas Branch and the customer. It is true to suggest foreign exchange rate will be quoted by us for a particular minute when asked for and the customer will take to the particular branch and after finalizing with the overseas branch, the contract will be concluded there. It is true that all the contract of FC will be in writing. I do not know how FC will be booked and finalized at the branch. It is true that International Division Mumbai will be facilitation with customer and the branch."

12.2 Further, learned Senior counsel referring to the evidence of Mrs.Vijaya Kamath who was examined as RW.1 before the Arbitral Tribunal, has contented that the entire evidence Mrs.Vijaya Kamath has gone against the Bank as she has admitted in her evidence that for booking any FPCs, the party used to hand over papers/applications with required details and the party for such Booking used to provide

confirmation by giving a contract note containing details of rate, amount booked and delivery and further admitted that the Bank used to take confirmation from the person in the form of signed contract note and signed statement of FPCs and further admitted that always FPCs are booked against confirmed export order or LCs. Since the evidence came by said witness has gone against the interest of the Bank, she was deliberately withheld before the DRT from being examined as a witness. On this, learned Senior Counsel submits that adverse remarks as contemplated under Section 114 of the Indian Evidence Act be taken against the Bank which has rightly been considered and answered by the DRT against the Bank in its well reasoned order. The evidence of Mrs.Vijaya Kamath as RW.1 to the questions asked, particularly question Nos.5, 17, 18, 19, 20, 23, 24, 25, 26, 46, 48, 49, 50, 51, 52, 53, 122 & 123 are extracted for easy reference.

"5. Q: You said, you have booked FC. What was the normal procedure for booking FC?"

A: The exporter with an intention to book the contract will hand over the papers relating to the contract to be booked with specific amount and delivery period for which the contract is to be booked. Then, the parties are permitted to take rate either from FD (Foreign Department) or ID (International Division) and then inform the branch regarding the transaction and the branch in turn report to FD or ID and complete the transaction.

17. Q. With whom the contract is competed?

A: With the Bank-i.e., Overseas Branch.

18. Q: How is the contract concluded/ completed in general?

A: The contract will be concluded on fully utilizing the contract or it should be utilized or cancelled. The contract begins with booking and concludes with utilization or cancellation.

19. Q. When does the booking concludes?

A: On entering in the Book or the System of the Bank Overseas Branch.

20. Q: Do you provide confirmation of the booking to the customer who has booked?

A: Yes

23. Q: What is the procedure of the bank as regards providing confirmation of the booking of the contract?

A: We give contract note to the customer which has details of rate amount booked and delivery period.

24. Q: Do you take any confirmation from the customer as to the booking of the FC?

A: Yes.

25. Q: What type of confirmation do you take from the customer?

A: Signed contract note or statement of FCs.

26: Q: *What do you mean by Statement of FCs?*

A: *Every month the customer demands a statement of the FC outstanding as on date and we take the signature of the customer on that statement.*

46. Q. *After concluding the booking deal/ contract did you issue any confirmation to the customer, if so, what was the form of confirmation?*

A: *Yes. I have earlier mentioned the confirmation note, the statement whichever form the customer was comfortable with.*

48. Q: *You have mentioned that you used to get confirmation of the bookings made by the customer from the customer for each of the transactions. Have you done so in relation to Nisha Designs for the alleged 166 FCs booked during 2007-08?*

A: *Yes.*

49. Q: *Have you produced the documents which reflect confirmation by Nisha Designs?*

A: *No. I am not in a position to produce the confirmation as I have left the branch.*

50. Q: *In that case, can the branch produce the documents, to reflect confirmation by Nisha Design?*

A: *The branch cannot produce, as the same has been destroyed.*

51. Q: *The answers that you have given above are contrary to the one that you have stated that you have left the branch and you are not in a position to produce the confirmation, on the other hand you stated that the branch will also not in a position to produce and that they have been destroyed How do know that they are destroyed?*

A: *Not destroyed, it may not be easy to locate.*

52. Q: *Does that mean that they are still available?*

A: *Will be existing.*

53. Q: *I put it to you that there are no such confirmations for these disputed FCs, and you are making incorrect statement?*

A: *I do not agree.*

122.Q: *You have stated in para 5 that Nisha Design used to book FCs against confirmed orders or export LCs, Can you produce those documents of LCs and confirmed orders as regards the disputed contracts?*

A: *All the FCs always booked on confirmed orders or LCs.*

123. Q *I put it to you that there were no confirmed orders or LCs as regards the disputed FCs?*

A. *I do not agree."*

12.3 Learned Senior counsel further submits that as per the RBI guidelines, any FPCs which are not utilized are required to be cancelled in 07 days, which is clearly admitted by AW.1 in his cross-examination, stating that unutilized FPCs shall be cancelled within 07 days after maturity date. Learned Senior counsel submits that in the case on hand, the same remained even as per the Bank's allegations and contentions for more than 01 year, which is against the Banking Rules and Regulations and even failed to produce corroborative evidence. As such, the Bank has failed to prove existence of disputed 48 FPCs. In the

absence of materials for having booked the alleged FPCs, the Bank failed to discharge its contention before the DRT. The DRT has properly considered its case and rejected the same and with the well reasoned order holding that the Bank has failed to prove its case.

12.4 Learned Senior counsel further contended that a perusal of the order passed by the DRAT clearly indicates that the DRAT itself is not firm in its order regarding the proof of the FPCs by the Bank. The DRAT though at one stance records that there is admission by the witnesses that the FPCs should be in writing by means of a concluded contract, further observed that there is no documents in that regard produced by the Bank, however at the same time observes that the burden is on the petitioner to prove that said Mr.Dinesh Singh was not authorized person to deal with the Bank. Placing reverse/negative burden on the petitioner reversed the order passed by the DRT without there being any reason or

foundation or backing to the said reasons. Learned Senior counsel submits that the order passed by the DRAT is not a speaking order and the same is passed in ignorance of the evidence placed on record, as such same suffers from perversity and required to be set aside. With this, learned Senior counsel sought to dismiss the appeal and confirming the order passed by the DRT and rests his case.

13. Sri.T.P.Muthanna, learned counsel appearing for the Canara Bank, reiterating the submissions made before the DRT as well as DRAT submits that it is not the lengthy Judgment which is the decisive factor for the purpose of deciding the *lis* between the parties, but it is the reasoned order though may be short, but answers the *lis* in terms of law, required to be considered.

13.1 Learned counsel submits that the DRAT though with a short order but having considered the entire case placed by the Bank before the DRT by means of record, recorded its findings considering the fact of

earlier transaction of the Bank with the petitioners and held that the petitioners indeed booked the FPCs through their employee which is the normal practice on the trust reposed between the Bank and its customer. However, erred in declining interest claimed by the Bank. To that extent, learned counsel sought to allow the petition filed by the Bank and grant interest, by dismissing the petition filed by the Company.

13.2 Alternately, Sri.T.P.Muthanna, submits that in the event the contentions of the petitioners are accepted, then a remand is occasioned to consider the case on its merits before the DRAT. Accordingly, sought to remand the matter to the DRAT or to DRT by affording an opportunity to the Bank to adduce evidence and examine the witness Mrs.Vijya Kamath. With this, learned counsel sought to dismiss the petitions filed by the petitioners - Company and allow the petition filed by the Bank, setting aside the order

passed by the DRAT only to the extent of declining interest.

14. We, having heard the rival submissions, perused the entire Writ Petition papers in all the petitions, written submissions and synopsis filed by the respective parties.

15. The only point that would arise for our consideration is:

"Whether the DRAT is right in reversing the judgment passed by the DRT?"

16. At the outset, before going on the contentions of the parties, we would like to state regarding some admitted facts:

16.1 The petitioner is a renowned customer of the Bank having good number of transactions and deposits with the Bank. The petitioners were allowed several over drafting facilities which were subsequently

withheld and thereafter cancelled. There are several transactions of booking FPCs in writing and admittedly, except the alleged FPCs contended by the Bank which are the disputed in the present case, there is no outstanding claim as against the petitioners.

16.2 There was no concluded contract in writing regarding booking of FPCs. There was no resolution or authorization letter in favor of said Mr.Dinesh Singh who is alleged to be the employee of the petitioners who has booked the FPCs on behalf of the petitioner with the Bank.

16.3 As per the Inward Register, except 03 transactions, there is nothing corresponding with the transactions of the alleged FPCs.

16.4 No certificate as contemplated under Section 65B of the Indian Evidence Act was produced in support of the CD containing the alleged voice recording.

16.5 It is admitted even by the Bank that Mrs.Vijaya Kamath was examined as a witness before the Arbitral Tribunal. However though she was available in Bengaluru at the time when the matter was pending before the DRT, she was not examined as a witness, though the entire claim is made on the basis of registered maintained by her in the official transaction on behalf of the Bank in the Overseas Branch, as alleged by the Bank.

17. With this, now coming on the facts of the case, the Bank has put forward its claim that the petitioner through its employee Mr.Dinesh Singh booked FPCs numbering 48. However, neither utilized nor cancelled the same even after the term of maturity. The said fact was noticed in the year 2009 and a letter dated 19. 12.2009 was issued calling upon the petitioner to cancel the same within 07 days or else the same would be cancelled by the Bank and debit the same in the account of Petitioner No.1 for the loss suffered, at their risk.

18. As against the said letter, petitioner No.1 approached the City Civil Court under Section 9 of the Arbitration and Conciliation Act, 1996 and obtained a stay. The petition filed before this Court for appointment of an Arbitrator, was favored and ultimately the Arbitrator after considering the entire case, held that the Arbitrator has no jurisdiction to adjudicate upon the matter. This was unsuccessfully carried before the City Civil Court under Section 37(2)(a) of the Arbitration and Conciliation Act, by means of an appeal and which is the subject matter of W.P.No.24893/2016.

19. Before the DRT, as rightly contented by the learned Senior counsel, the Bank has contented its case in three folds. Firstly, basing on the Inward Register wherein the transactions were recorded; secondly, on the basis of Commission Payment Charges register, which was maintained by the Bank in the ordinary course of its business in respect of the Commissions between the Bank and the Customer; and thirdly, the voice record secured by means of a CD produced before the Court, alleging to

be the voice record of Mr.Dinesh Singh, who has placed the bookings on behalf of the petitioner with the Bank in respect of the aforesaid FPCs claimed by the bank.

20. The DRT upon consideration of the entire evidence and in the teeth of admissions which we have already extracted herein above, has come to a conclusion that the Bank has miserably failed to prove its case against the petitioner to stake a claim for damages along with interest as stated in the petition/ application.

21. We have perused the entire order passed by DRT. We find force in the argument of learned Senior counsel that the DRT after properly dwelling upon the record placed by the parties and the evidence and in the teeth of admissions by the witnesses of the Bank and in the absence of concluded contract in terms of the RBI guidelines as well as the internal bank circulars, has held that the Bank has failed to prove its case and dismissed the petition/ application on the ground of lack of evidence.

22. Admittedly, the FPC is a contract whereby Bank/Dealer agrees in advance with a customer that it/he would pay to the customer, for every foreign currency tendered by such customer, in Indian rupees at an agreed rate (agreed as on the date of booking/ entering into the contract), irrespective of the prevailing exchange rate on the date of tender. The FPCs are booked/ entered into by the exporters to mitigate their risk due to fluctuation in the Foreign Exchange Rate. In terms of the present regulation governing the FPCs, the exporters are allowed to cover their risk for a maximum period of one year from the date of booking. If the FPCs are not utilized, the same are required to be cancelled by the exporters within 7 days of their maturity and they are required to pay resulted profit/ loss to the Bank.

23. In view of specific denial by the petitioners regarding the concluded contract in respect of booking of FPCs, the burden heavily lies on the Bank to prove its claim i.e., it is the petitioners who booked the FPCs with

the Bank through their said employee Mr.Dinesh Singh as contended by the Bank.

24. In the case on hand, the Bank neither produced the concluded contract nor produced any authorization letter or resolution in favor of said Mr.Dinesh Singh to deal with the Bank on behalf of the petitioner for booking FPCs. The Bank has not taken any pain to examine Mrs.Vijaya Kamath, who was the employee of the Bank managing the official business of the Bank at Overseas Branch, nor the said Mr.Dinesh Singh, who appeared on behalf of the petitioner and booked the FPCs in the absence of concluded contract, to prove their case that the normal practice of the said branch in booking is only on the oral instructions and on the telephone conversation. The DRT after considering all these material aspects, evidence and particularly in the teeth of admissions by the witnesses examined on behalf of the Bank, dismissed the application/ petition filed by the Bank claiming the damages as well as interest thereon.

25. The DRAT without considering these aspects of the matter, has casted a reverse burden on the petitioners holding that the petitioners have failed to prove that said Mr.Dinesh Singh is not their employee. It is settled position of law that under Section 101 and 102 of the Indian Evidence Act, it is for the person who approaches the Court to prove his initial burden with respect to the claim made by him in order to seek an order in his favor by the Court/ Tribunal. In the absence of such a discharge of initial burden, casting the burden on the other side amounts to negative burden which is not enjoined under the provision stated supra. This Court in the case of **K.F.NOOR BASHA VS. MR.S.MOINUDEEN AND OTHERS** in R.F.A No.1728/2016 disposed of on 11.03.2026, with regard to negative burden, at paragraph No.24 to 26 of the Judgment has held as under:

"24. Our view is supported on the Rule - 'Ei incumbit probatio qui dicit, non qui negat' - the burden of proving a fact rest on the party who substantially asserts the affirmative of the issue and not upon the party who denies it; as negative is usually incapable of proof. This rule is derived

*from the Roman law, and is supportable not only upon the ground of fairness, but also upon that of the greater practical difficulty which is involved in proving a negative than is proving an affirmative. "It is an ancient rule founded on consideration of good sense and should not be departed from without strong reasons". (Per Lord Maugham in **CONSTANTINE LINE LTD., Vs. I S CORPN. - (1942) AC 154 : (1941) 2 ALL ER 165** [taken from SARKAR on Law of Evidence, 16th Edition. Volume 2 at page 1584].*

(emphasis supplied)

25. As per Section 101 and 102 of the Indian Evidence Act, 1872, the initial burden is always on the person who approaches the Court and fails if no evidence at all was given on either side plaintiff and if he discharges that onus and makes out a line for the relief sought in the case, then the onus/ burden shifts on the defendant to prove those circumstances, if any to prove that the plaintiff is not entitled to the relief sought in the suit. In the case on hand, a bare perusal of Issues especially 2 to 4 pellucidly clear that they have casted reversal burden on the defendant and they are not sustainable in law. The Trial Court failed to consider this aspect of the matter.

26. Our view is also supported with the law laid down by the Hon'ble Apex Court in the case of **ANIL RISHI VS. GURBAKSH SINGH** reported in **(2006) 5 SCC 558**, wherein the Hon'ble Apex Court at Paragraphs No.8, 9 and 19 held as under:

"8. The initial burden of proof would be on the plaintiff in view of Section 101 of the Evidence Act, which reads as under:

"101. Burden of proof. 7 Whoever desires any Court to give judgment as to any legal right or liability dependent on the existence of facts which he asserts, must prove that those facts exist.

When a person is bound to prove the existence of any fact, it is said that the burden of proof lies on that person."

9. In terms of the said provision, the burden of proving the fact rests on the party who substantially asserts the affirmative issues and not the party who denies it. The said rule may not be universal in its application and there may be exception thereto. The learned trial Court and the High Court proceeded on the basis that the defendant was in a dominating position and there had been a fiduciary relationship between the parties. The appellant in his written statement denied and disputed the said averments made in the plaint.

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19. There is another aspect of the matter which should be borne in mind. A distinction exists between a burden of proof and onus of proof. The right to begin follows onus probandi. It assumes importance in the early stage of a case. The question of onus of proof has greater force, where the question is which party is to begin. Burden of proof is used in three ways : (i) to indicate the duty of bringing forward evidence in support of a proposition at the beginning or later; (ii) to make that of establishing a proposition as against all counter evidence; and (iii) an indiscriminate use in which it may mean either or both of the others. The elementary rule is Section 101 is inflexible. In terms of Section 102 the initial onus is always on the plaintiff and if he discharges that onus and makes out a case which entitles him to a relief, the onus shifts to the defendant to prove those circumstances, if any, which would disentitle the plaintiff to the same."

26. A perusal of the order passed by the DRAT, as rightly contented by learned Senior counsel that, the DRAT

itself is not clear in its mind regarding the proof of the case placed by the applicant - Bank. The DRAT though observes that the Bank had unnecessarily entered into an adventure of entering on such oral instructions of the employee of Company on one hand, but at the same point of time, on the other hand, observes that ultimately the transactions of the Bank find place in the record and writing and those entries should not have been ignored in a casual manner.

27. The DRT after going through the entire record placed, has given a clear finding that there is no corresponding record with regard to the transactions alleged by the Bank on the basis of register relied stated supra in its judgment, especially at Page Nos.61 to 79. It was the contention of the Bank before the DRT that they are having documents in respect of the transactions in the registers available in the Overseas Branch. However, the same were withheld before the DRT. The DRT having considered these aspects of the matter has taken an adverse inference as contemplated under Section 114 of

the Indian Evidence Act. There is no consideration of these aspects by the DRAT.

28. The DRAT having recorded its finding that there is no proof of booking the FPCs in respect of 43 transactions, however holds that transaction was booked through the employee by name Mr.Dinesh Singh on behalf of the petitioner as prevailed in the normal practice of official transaction in the branch. Further held that for the lapses on the part of the officials, Bank cannot be made to suffer and referring to the Letter of the Bank dated 19.12.2009, has held that the said letter cannot be found baseless on the ground that only Bank had a burden to prove the transactions. Further observed that something wrong done by the Bank official or by the representative of the Company, alone will not make any profit and prejudice to a party. The DRAT relying on the documents which were considered and found to be not concerned with the FPCs, held that the DRT has erred in dismissing the application only on procedural lapses rather appreciating the evidence in a wider perspective and further observed that, in view

relationship of the Borrower and the Bank in respect of both firms and of the transactions earlier, the claim made by the Bank should have been answered favorably on the basis of the statement of account filed by the Bank. However declined to grant interest for the lapses as the Bank official did not act in prudent and competent manner in favor of the Bank.

29. We are dismayed and not in a position to comprehend the reasons assigned by the DRAT while subsiding the entire well-reasoned judgment of the DRT. The DRT while considering the entire case put forward by the parties, has consulted all the evidence, documents produced by the parties and in the teeth of admissions of the Witnesses of the bank itself, has held that the Bank has miserably failed to prove its case regarding the alleged booking of 48 FPCs in view of evidence and dismissed the case of the applicant Bank.

30. As rightly observed by the DRT that, the Bank dealing with public money, must dressed itself with Rules

and Law while in its official transactions in all fair and proper manner, in strict adherence to the guidelines issued by the RBI and internal Circulars, any diversion or exception to the same vitiates the entire transaction. Since the Banks are dealing with the finance that has got a bearing on the economy of the Country, the amount involved and claimed are in Crores, but at the same time it cannot be lost sight that the petitioner was highly renowned and loyal customer of the Bank for several years, having dealings in several transactions and there is no outstanding of any sort between the petitioner and the Bank, except these alleged transactions which were lacking evidence. The bank has catastrophically failed to stand on its contentions, with backing corroborative evidence both oral as well as documents to that effect.

31. We having found no infirmities in the order passed by the DRT, confirm the same while setting aside the order passed by the DRAT as the same is without appreciating the evidence placed on record and is given against the evidence and accordingly, suffers from

perversity and short of reasons. The reasons are considered as heart and soul of the Judgment. The said, we neither find heart nor soul in the order of DRAT, except muted words without any legs to stand. We, accordingly set aside the order passed by the DRAT. Consequently, the appeal filed by the bank is dismissed confirming the order passed by the DRT.

32. We try to emphasize here on record that as stated supra as the Banks are dealing with public money, they should take all caution and care while dealing in their official transaction business. Any exception or diversion may cause hazardous to the financial business of the Bank and create chaos and reflect on the economy of the Country. The Bank and its officials are expected to adhere to the Rules, Guidelines issued time to time by the RBI and the internal Circulars issued by the Head Office to the Branch Offices of the said Bank while dealing with their official business with the customers. An exception to the said Rules may pave way to several sinisters who are just waiting and projecting to take advantage of such a

situation causing loss in financial business, which ultimately having effect on the economy of the Country. It is high time for the Bank to adhere strictly to the Rules by giving proper directions to the employees without taking any diversion or exception to the prescribed Guidelines, Rules, Circulars in their official transaction or business, and any exception taken by any of the employees be dealt with iron hands, keeping in mind that they are owing fundamental duty towards the public money and accounted for each penny.

33. With these observations, the petition filed by the petitioners in W.P.No.3120/2018 is **allowed**. The order passed by the DRAT in R.A.No.82/2017 is set aside, while confirming the order passed by the DRT in O.A.No.742/2011. In view of answering the prayers sought in W.P.No.3120/2018, the Writ Petition filed by the Canara Bank in W.P.No.27021/2019 renders infructuous. Accordingly, W.P.No.27021/2019 is **dismissed**.

**WP No. 24893 of 2016
C/W WP No. 3120 of 2018
WP No. 27021 of 2019**

34. In view of well considered order passed by the DRT and nothing remains for this Court to consider the alternative prayer made by learned counsel appearing for the Bank for remand of the matter. Accordingly, the same is rejected.

35. In view of our order passed in W.P.No.3120/2018, W.P.No.24893/2016 does not survive for consideration and accordingly, the same is **dismissed**.

36. In view of disposal of the Writ Petitions, pending interlocutory applications, if any are disposed of.

**Sd/-
(D K SINGH)
JUDGE**

**Sd/-
(T.M.NADAF)
JUDGE**

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