

SUPREME COURT OF INDIA

(1) Citibank N.A. (2) Canbank Financial Services Limited.

Vs

(1) Standard Chartered Bank (2) Citibank N.A.

Civil Appeal No. 7426 of 1996

(Rajendra Babu (CJI) and Ashok Bhan)

07/07/2004

JUDGMENT

ASHOKBHAN, J.

1. This judgment shall dispose of Civil Appeal No. 7426 of 1996 arising in Suit No. 24 of 1994 (filed by Standard Chartered Bank against Citibank) decided on 12th / 13th March, 1996 and Civil Appeal No. 9063 of 1996 arising in Suit No.1 of 1995 (filed by Citibank against Canbank Financial Services Ltd.) decided on 22/23/26th April, 1996. Civil Appeal No. 9138 of 1996 has been filed by Citibank against Canbank Financial Services Ltd. arising from the same suit i.e. suit No.1 of 1995. Suits were tried by the Special Judge appointed under the Special Courts (Trial of Offences Relating to Transactions in Securities) Act, 1992, hereinafter referred to as 'the Act'.

2. In the year 1991-92, Reserve Bank of India noticed that large scale irregularities and mal practices were committed in transactions in both the Government and other securities, by some brokers in collusion with the employees of various banks and financial institutions. The said irregularities and mal-practices led to the diversion of funds from banks and financial institutions to the individual accounts of certain brokers. 'The Act' was enacted to deal with this situation and, in particular, to ensure speedy recovery of the huge amount involved and to punish the guilty and restore confidence in and maintain the basic integrity and credibility of the banks and financial institutions. The Special Courts were to be presided over by a sitting Judge of the High Court to be nominated by the Chief Justice of the High Court within the local limits of whose jurisdiction the

Special Court is situated, with the concurrence of the Chief Justice of India. The Act also provided for appointment of one or more Custodian for attaching the properties of the offenders with a view to prevent diversion of such property by the offenders. The Custodian, on being satisfied, on information received that any person has been involved in any offence relating to transactions in securities after the 1st day of April, 1991 and on or before 6th June, 1992 could notify the name of such person in the Official Gazette. Special Courts were given the jurisdiction to deal with cases of as criminal liability of the notified person.

3. A common object namely Banker Receipt (for short 'BR') No. 1401 is the subject matter of two suits in which there are three major players namely Standard Chartered Bank (for short 'SCB'), Citibank and Canbank Financial Services Ltd. (for short 'CANFINA'). The present appeals arise out of a set of transactions between these three parties. Suit No. 24 of 1994 filed by SCB has been decreed against the Citibank and that is how the Citibank is in appeal in Civil Appeal No. 7426 of 1996 and Suit No. 1 of 1995 filed by the Citibank has been decreed against the CANFINA and that is how CANFINA is in appeal in Civil Appeal No. 9063 of 1996. Civil Appeal No. 9138 of 1996 has been filed by Citibank against CANFINA feeling partially aggrieved by the judgment and order of the Special Court in Civil Suit No. 1 of 1995.

4. The facts giving rise to these appeals are:

On 30th of December, 1991, Citibank purchased 9% IRFC Bonds of the face value of Rs. 50 crores for CANFINA. Citibank made full payment for the above-mentioned bonds to CANFINA. In consideration thereof, CANFINA, in accordance with the market practices, delivered to the Citibank Bankers Receipt No. 1401 dated 30th December, 1991. On or about 3rd February, 1992, Citibank purchased similar 9% IRFC Bonds of the face value of Rs. 65 crores from CANFINA. Citibank made full payment for the same as well. In consideration whereof, the CANFINA delivered their Bankers Receipt No. 1541 dated 3rd February, 1992 to the Citibank. On or about 5th February, 1992 Citibank sold to CANFINA 9% IRFC Bonds, of the face value of Rs. 105 crores. By way of delivery for the same, Citibank first decided to return to CANFINA above-mentioned two Bankers Receipts Nos. 1401 and 1541. Citibank affixed its stamp and made an endorsement on the reverse of the BR No. 1401 to the effect 'BR exchanged against our sale of date'. But subsequently instead of returning the banker receipt No. 1401 to CANFINA, a fresh banker receipt of Citibank for Rs. 40 crores was issued and sent to CANFINA along with bankers receipt No. 1541 of Rs. 65 crores. These bankers receipts were accepted by CANFINA against the Citibank's liability to CANFINA for RS. 105 crores of 9% of IRFC Bonds. According to the Citibank, as banker receipt No. 1401 of CANFINA was not utilised the Citibank cancelled the endorsement written on the reverse of the bankers receipt No. 1401. According to Citibank CANFINA's liability continued to remain subsisting under the said BR.

5. On or about 19th February, 1992 Citibank sold to SCB 9% IRFC Bonds of the face value of Rs. 72.50 crores. Citibank received payment for the same and issued BR No. 47 dated 19th February, 1992 in favour of the SCB in the sum of Rs. 72.50 crores.

6. On 28th February, 1992, CANFINA wrote a letter to the Citibank requesting the Citibank to

collect the IRFC Bonds of the face value of Rs. 50 crores from SCB and release their bankers receipt No. 1401.

7. On 4.3.1992 SCB discharged BR 47 dated 19.2.1992 for Rs. 72.50 crores and returned the same to Citibank with an endorsement of due discharge on the reverse of the BR in exchange for CANFINA BR 1401 of the face value of Rs. 50 crores and Citibank's fresh BR No. 47 (coincidentally the number is same) for Rs. 22.50 crores for the balance amount in favour of SCB. BR 47 dated 4th March, 1992 of the face value of Rs. 22.50 crores was honoured and duly discharged and there is no dispute about the same. According to the Citibank, its liability under BR No. 47 dated 19.2.1992 for Rs. 72.50 crores was discharged as it had delivered BR No. 1401 of Rs. 50 crores given to it by CANFINA and BR No. 47 dated 4th March, 1992 of the face value of RS. 22.50 crores in favour of SCB.

8. BR 47 dated 19.2.1992 and BR 47 dated 4.3.1992 would be referred to respectively as original BR and fresh BR wherever necessary.

9. SCB through its attorney made a demand for delivery of bonds from Citibank under BR 1401 by its notice dated 4.6.1992, a copy of the letter was endorsed to CANFINA as well. Citibank sent a reply to the attorney's letter dated 4.6.1992 through its own attorney on 6.7.1992 denying its liability to deliver any securities or make payment of any amount to SCB.

10. In or about 27th November, 1992, SCB filed a suit being No. 3828 of 1992 against the Citibank in the Bombay High Court alleging therein that the Citibank had failed to deliver to them the securities given by the said BR No.1401 and claiming from it the securities and, or the value of the securities. On or about 25th July, 1994 that suit was transferred to the Special Court and renumbered as Suit No. 24 of 1994.

11. On 29th December, 1994, Citibank filed a suit in the Special Court, being Suit No. 1 of 1995, inter alia, against the CANFINA. The said suit was in the nature of the third party proceedings as a consequence of the above-mentioned suit No. 24 of 1994 filed by the SCB. In the suit No.1 of 1995 Citibank claimed that if the Citibank was held liable to the SCB in suit No. 24 of 1994, the Citibank was entitled to make a claim as against CANFINA for non performance of their obligation under BR No. 1401 and were entitled to the securities or their face value. Suit No. 1 of 1995 in substance is in the nature of third party proceedings arising from Suit No. 24 of 1994 filed by the SCB against the Citibank.

12. SCB took out chamber summons dated 30th December, 1994 being chamber summons 18/94 to join CANFINA as party in Suit No. 24 of 1994. The said chamber summons was opposed by CANFINA on the ground that SCB could have no claim against it and therefore it was neither a necessary nor a proper party. The learned Special Court by its order dated 7th February, 1995 held that CANFINA was a necessary and proper party to the suit and the question as to whether the SCB could have any claim against CANFINA or not was a question on merits which would be decided at the final hearing of the suit.

13. Reversing its stand SCB on 2nd January, 1996 made an application to drop CANFINA as a party defendant in Suit No. 24 of 1994. CANFINA opposed this application as well but the learned Judge by an order dated 22nd January, 1996 allowed SCB to drop CANFINA from the said suit and adjourned the suit for 2nd March, 1996 for final hearing. The learned Judge thus de-linked the two suits, although both the suits concerned the same question i.e. whether the Citibank or CANFINA were liable for the outstanding bankers receipt No. 1401 of CANFINA.

14. On 1st March, 1996, Citibank made an application to the Special Court in Suit No. 1 of 1995 that both the suits, Suit No.24 of 1994 and Suit No. 1 of 1995 be heard together as common questions of law and facts arise for consideration in both the suits. The Special Court dismissed the application by its order dated 1.3.1996. Citibank, being aggrieved, against the orders dated 22.1.1996 and 15.2.1996 filed two special leave petitions in this Court which were withdrawn by Citibank on 15th March, 1996 as the trial of Suit No. 24 of 1994 had commenced by that time.

15. It needs to be mentioned that Citibank's Suit No. 1 of 1995 initially was against four defendants namely (1) Hiten P. Dalal (2) Standard Chartered Bank (3) Canbank Financial Services Ltd. and (4) A.K. Menon, the Custodian but later on Citibank got the suit dismissed against defendants Nos. 1, 2 &4 for non-prosecution and allowed the suit to proceed only against CANFINA.

16. By judgment dated 12th/ 13th March, 1996 the Special Court decreed the Suit No. 24 of 1994 filed by SCB and ordered the Citibank to pay to the SCB a sum of Rs. 482,791,096/- as and by way of return of consideration and/ or on the basis of monies had and received inclusive of accrued interest at the coupon rate of 9%. The learned Judge awarded interest @ 20% per annum equivalent to Rs. 414,803,528/-. The costs of Rs. 15,49,462/- were also awarded to SCB being the actual cost. The Citibank therefore paid a total amount of Rs. 899,155,086/- to SCB under the said decree. Citibank being aggrieved, has therefore filed Civil Appeal No. 7426 of 1996 against SCB.

17. After conclusion of Suit No. 24 of 1994, the trial of Suit No. 1 of 1995 commenced in the middle of March, 1996. By its order dated 26th April, 1996 the Special Court passed a decree in favour of the Citibank by ordering the CANFINA to deliver to Citibank 9% IRFC Bonds of the face value of Rs. 50 crores within a period of 16 weeks along with the coupon interest @ 9% per annum from 15th July, 1991 till the bonds were delivered. The learned Judge awarded an interest @ 9% per annum from 30th December, 1991, the date CANFINA received the consideration till the date of repayment. Parties were directed to bear their own costs. CANFINA, being aggrieved, against the aforesaid judgment has filed Civil Appeal No. 9063 of 1996 against Citibank.

18. Aggrieved against the findings of the learned Judge to the effect that Suit No. 1 of 1995 was not in the nature of third party proceedings and therefore the Citibank was not entitled to recover the amount ordered by the Court to be paid to the SCB in Suit No. 24 of 1994 and the fact that the learned Judge did not grant the Citibank interest @ 20% per annum as had been granted in Suit No. 24 of 1994 and also that costs were not awarded, the Citibank has filed Civil Appeal No. 9138 of 1996.

19. Facts in nutshell around which the controversy revolves are that Citibank held BR No. 1401 of face value of Rs. 50 crores issued by CANFINA in its favour. On 19th February, 1992 Citibank sold to SCB bonds of the face value of Rs. 72.50 crores. Citibank received payment for the same and issued original BR No. 47 dated 19th February, 1992 in favour of SCB in the sum of Rs. 72.50 crores. On 28th February, 1992 CANFINA wrote a letter to the Citibank requesting the Citibank to collect the IRFC Bonds of the face value of Rs. 50 crores from SCB and release their bankers receipt. On March 4, 1992 SCB 'discharged' original BR 47 dated 19.2.1992 and took from Citibank the CANFINA BR No. 1401 of the face value of Rs. 50 crores and Citibank's fresh BR No. 47 dated 4th March, 1992 of the face value of Rs. 22.50 crores. Almost after three months of discharge of the original BR 47 and after break up of the scam, SCB by its attorney dated 4.6.1992 made a demand for delivery of bonds from Citibank under BR 1401 while endorsing a copy of letter to CANFINA. Citibank sent a reply to the attorney's letter dated 4.6.1992 through its own attorney on 6.7.1992 denying its liability to deliver any securities or to make payment of any amount to the SCB. Thereafter SCB filed the suit, reference to which has been made in detail in the foregoing paragraphs.

20. Case of the SCB in the suit is that having purchased bonds of face value of Rs. 72.50 crores on 19.2.1992 SCB received from Citibank original BR 47 dated 19.2.1992 of the face value of Rs. 72.50 crores. Thereafter on 4th March, 1993 SCB discharged and handed over original BR 47 to Citibank. Against the same Citibank issued to the SCB fresh BR 47 of the face value of RS. 22.50 crores and delivered CANFINA BR 1401 dated 30.12.1991 to the face value of Rs. 50 crores. It was contended that endorsement and delivery of CANFINA BR to SCB was on the footing that CANFINA would honor the same. At best the delivery of CANFINA BR merely conferred an authority on SCB to receive bonds from CANFINA and it was an implied term of the arrangement between SCB and Citibank, that if for any reason SCB did not receive bonds from CANFINA, Citibank's obligation would continue or would stand revived.

21. Case of the Citibank in its written statement is that SCB duly discharged original BR 47 dated 19.2.1992 of the face value of Rs. 72.50 crores. On receipt of CANFINA BR 1401 of the face value of Rs. 50 crores and Citibank fresh BR 47 dated 4.3.1992 to the face value of the Rs. 22.5 crores which was duly encashed. That the aforesaid discharge of Citibank original BR 47 and receipt by SCB of CANFINA BR 1401 was unconditional and the Citibank was discharged of its obligation in respect of transaction dated 19th February, 1992. That the Citibank was under no obligation to either delivery the securities or the amount thereof and in any event, right, if any, of SCB was only against CANFINA. That SCB should take action against CANFINA.

22. On the pleadings of the parties the following issues were framed by the Special Court:

(i) Whether the suit is not maintainable and should be dismissed for non-joinder of Canbank Financial Services?

(ii) Whether upon the original Bankers Receipt No. 47 being handed over duly discharged to the defendants the plaintiffs ceased to have any right in respect thereof or for the IRFC Bonds of the

face value of RS. 72.50 crores mentioned therein, the said discharge being in view of the plaintiffs accepting unconditionally from the defendants the said Canfina Bankers Receipt No. 1401 for Rs. 50 crores and the defendants Bankers Receipt for IRFC Bonds of the face value of Rs. 22.5 crores as alleged in paragraph 8 of the written statement?

(iii) Whether there was an established and accepted market practice to deliver and accept Bankers Receipts in effective discharge of the obligations to deliver physical securities as stated in para 6(c) and para 12 of the written statement?

(iv) Whether the plaintiffs are estopped from denying that the defendants have discharged their obligations in respect of the IRFC Bonds of the face value of Rs. 50 crores or from contending that the defendants obligations in that behalf remains outstanding or subsisting as alleged in paragraphs 3 and 12 of the written statement?

(v) Whether the plaintiffs remedy is against Canfina only and not against the defendants as alleged in paragraph 12 and 13 of the written statement of the defendants?

(vi) Whether the plaintiffs are entitled to any relief and if so, what relief?

23. No oral evidence was led by SCB in the suit. Citibank also did not lead any oral evidence. The matter was thus required to be decided only on the basis of the documentary evidence and facts admitted by the parties.

24. Under Issue No.1 it was held that suit was maintainable and was not liable to be dismissed for non-joinder of CANFINA. Issue No. 2 & 4 were taken up together and were answered against the Citibank and in favour of the SCB. It was held that the Citibank had failed to discharge its obligation in respect of IRFC bonds of the face value of Rs. 50 crores and its obligation continued in this behalf. That there was no valid discharge of original BR 47 and mere handing over of original BR 47 with an endorsement of due discharge on the reverse of it did not amount to a valid discharge. That acceptance of BR 1401 for Rs. 50 crores of CANFINA and Citibank's BR for IRFC bonds of the face value of Rs. 22.5 crores did not amount to a valid discharge of original BR 47 and the Citibank continued to remain under obligation to return the securities or the amount thereof. That there was a failure of consideration inasmuch as neither the Citibank nor the CANFINA had delivered bonds worth Rs. 50 crores to SCB. Issue No. 3 was held to be not proved. Issue No. 5 was answered in the negative. Issue No. 6 was relief clause and was answered as per order.

25. In order to come to the conclusion arrived at on Issue Nos. 2 & 4 the Special Court relied upon its own decision in Suit No. 22 of 1994 dated 10th July, 1995 and Suit No. 20 of 1994 dated 7th July, 1995 between the same parties relating to another set of transactions. The orders passed by the Special Court in Civil Suit No. 22 of 1994 and Civil Suit No. 20 of 1994 were subject matter of Civil Appeal No. 7941 of 1995 and Civil Appeal No. 8340 of 1995. These two appeals were accepted by this Court by its judgment dated 8th October, 2003 titled Citibank N.A. vs. Standard Chartered Bank, reported in , and judgment and order of the Special Court was set aside.

26. Since the Special Court in the impugned judgment had relied upon its own judgment in Suit No. 20 of 1994 and Suit No. 22 of 1994 to decree the SCB's suit and held that facts of the present case are identical to the facts in Civil Suit No. 20 & 22 of 1994, it would be necessary to refer to the facts of those cases in detail before proceeding and examining the submissions made by the respective learned counsel appearing for the parties in these appeals.

27. In those cases also the SCB had a transaction in securities with Citibank on 18th & 19th September, 1991. In those cases as well the original SGL transfer form which had been issued by the Citibank to the SCB was exchanged by another SGL of a smaller amount of the Citibank and SGL transfer form issued by CMF to the Citibank. SGL transfer forms of CMF were handed over to SCB on the basis of a letter issued by an officer of the SCB. SCB filed Suit No. 22 of 1994 against the Citibank and Canara Bank and Others, trustees, of CMF. Citibank filed suit No. 20 of 1994 against the brokers in the transaction (1) Hiten P. Dalal, (2) the SCB, and (3) CMF. Suit No. 20 of 1994 was termed as a third party proceedings as has been contended in Suit No. 1 of 1995.

28. One of the question which arose for consideration before the Special Court was whether the mere handing over of the SGL transfer form there could be any discharge of liability. It was held that mere handing over of SGL transfer form would not amount to discharge of the original consideration. There could be no discharge unless there was a satisfaction. Special Court also held that Section 41 and not Sections 62/63 of the Indian Contract Act would be applicable in the facts and circumstances of the case. Plea of Citibank that as the discharged SGL came from its possession / custody, a rebuttal presumption be raised against SCB under illustration (i) of Section 114 of the Indian Evidence Act and, as SCB had failed to rebut the presumption by leading any evidence, it be deemed that Citibank was duly discharged of its obligation was rejected. Similarly, the plea raised by the Citibank that an adverse inference be drawn under illustration (g) of Section 114 of the Indian Evidence Act against SCB as it had failed to produce / disclose the material piece of evidence which would have thrown much light on the issue in controversy was rejected. The Court also held that there could be no discharge unless there was satisfaction and the SCB could sue the Citibank on its original

consideration.

29. In Citibank's case (supra) the findings recorded by the Special Court on the applicability of Sections 41, 62 and 63 of the Indian Contract Act were set aside. It was held that Section 41 was not applicable. Section 63 of the Indian Contract Act would be applicable. That SCB had taken the SGL of CMF for the reason best known to itself. Citibank stood discharged of its obligation under the SGL and no recovery could be made from it. Since the SGL duly discharged was produced by the Citibank a rebuttal presumption under illustration (i) of Section 114 of the Indian Evidence Act of due discharge of its liability by the Citibank could be raised which the SCB failed to discharge by leading any evidence. Further as SCB had failed to produce the material evidence which was in its possession or gave any explanation as to why it had accepted SGL of CMF drawn in favour of Citibank, an adverse inference under illustration (g) of Section 114 of the Indian Evidence Act could be raised against it. Appeals were accepted, Suit filed by the SCB was dismissed. Consequently, the appeal filed by CMF against Citibank, being a contingent suit, was also accepted and the suit filed by the Citibank against CMF was ordered to be dismissed.

30. Learned Judge of the Special Court in the present appeals has held that the facts being similar as in the previous cases, the law applicable in the present case would be the same. The finding on points of law on the applicability of Sections 41, 62 and 63 of the Indian Contract Act were reiterated. The benefit of illustrations (I) and (g) of Section 114 of the Indian Evidence Act was denied to the Citibank. It was held that the plaintiff SCB at the highest agreed to act as an agent of the defendant (Citibank) and collect the 50 Crores Bonds from CANFINA and appropriate them towards the Citibank obligation to deliver 50 crores bonds. On the failure of the CANFINA to honour the commitment there was no way that the SCB could enforce any claim against CANFINA as there was no privity of contract between SCB and CANFINA. As the CANFINA had refused to honour the BR, the Citibank was not discharged of its obligation until such time as CANFINA honoured its commitment. The Citibank's obligation to deliver the bonds could not be deemed to be discharged unless such time as SCB received the bonds. On the failure of the CANFINA to honour the commitment the SCB could fall back on the original consideration.

31. Shri Andhyarujina, learned senior advocate appearing for the appellant submitted that this Court in Citibank's case (supra) reversed the previous judgment of the Special Court in Suit Nos. 20 & 22 of 1994. The Special Court relying upon its earlier judgment has held that Citibank was not absolved of its obligation to make good the bonds or the value thereof by merely handing over CANFINA BR 1401 to SCB. As the earlier judgment of the Special Court in the previous suits has been set aside by this Court in Citibank's case (supra) the view taken by the learned Special Court was erroneous and liable to be set aside. That the Citibank was duly discharged of its obligation by the SCB. Original BR dated 19.2.1992 was returned to Citibank with an endorsement of due discharge on the reverse of it. By this act of SCB alone, Citibank stood discharged of its obligation to either furnish the securities or amount due thereon. That SCB took CANFINA BR 1401 voluntarily and unconditionally knowing full well that the said CANFINA BR was non-transferable. The obvious inference was that SCB desired the said CANFINA BR for its own purpose inasmuch as the said BR otherwise would be useless. This fact conclusively proves that SCB did not take BR 1401 from Citibank as an authority to collect the securities or it was a condition of the discharge. That the Special Court clearly fell in error in placing reliance on Section 41 of the Indian Contract Act. Reliance on section 41 is completely misplaced in the facts and circumstances of the present case. According to him, the case of Citibank squarely falls under Section 63 of the Indian Contract Act and the learned Special Court erred in taking a view contrary to it. In the instant case, admittedly, the original BR 47 was discharged and delivered back to Citibank. Since the original BR 47 dated 19.2.1992 was in the custody of Citibank and produced by it in court a rebuttal presumption of due discharge should have been raised in favour of the Citibank. SCB failed to dislodge the presumption by leading any evidence whatsoever. That the SCB failed to give any explanation as to why it accepted a non-transferable document (BR 1401). The implied condition of warranty under the circumstances could not be imported as has been done by the learned Special Court.

32. As against this, Shri Shanti Bhushan, learned senior advocate appearing for the respondents-SCB contended that in law the method of discharge of contractual obligations involving a risk of non-performance by a third party creates a presumption of conditional satisfaction only. Prima facie, therefore, any discharge of Citibank's obligation was conditional upon CANFINA in fact delivering the bonds of SCB in satisfaction of Citibank's obligation. That Citibank failed to produce any evidence to rebut this presumption. Under the circumstances a due inference can be drawn that the

discharge given by the SCB was merely conditional. The legal presumption reflects the practical realities of business: and SCB's case that Citibank's obligation was only discharged on condition that BR 1401 was honoured by CANFINA makes legal, commercial and practical sense. That the stand taken by the Citibank that SCB unconditional gave up its legal rights against Citibank in return for BR 1401 which did not give any legal rights to SCB against CANFINA defies commercial logic. Unlike the position in Citibank's case (supra), there are no special facts on which the Citibank could rely to displace the presumption. On failure of CANFINA to deliver the bonds to SCB, SCB could fall upon its original consideration against the Citibank.

33. Learned counsel for the parties has been heard at length.

34. Fate of these appeals depends upon the answers to issue Nos. 2 7 4, as framed by the Special Court. We are in agreement with the view taken by the learned Special Court that the facts and points of law involved in the present appeals are similar to the facts and points of law in the previous cases (subject matter of Citibank's case (supra)). The only difference on facts being that SCB in the previous cases specifically made a request to the Citibank to give SGL of CMF which was in its possession whereas in the present cases there is no such request in writing. All other facts are more or less similar.

35. A Bankers Receipt is a document issued by the seller bank acknowledging that it has received money for the sale of a particular security. It implies that the subject security is not readily available for delivery and that the same shall be delivered against the return of Bankers Receipt duly discharged, and in the mean time the securities are held by the seller bank on account of the purchaser. The form of BR is not statutory, however, there is a recommendatory form and rules relating to BR issued by Indian Bankers Association.

36. Fact that Citibank was discharged of its obligation under BR 47 dated 19.2.1992 stands admitted by SCB in its pleadings as well as the submission before the Special Court, SCB in para 7 of the plaint, which reads,

"Thereafter, on or about 4th March, 1992, the plaintiffs discharged and handed over Bank Receipt No. 47 to the 1st Defendants. Against the same, the 1st Defendants issued to the plaintiffs a Bank Receipt of the 1st Defendants favouring the Plaintiffs for 9% IRFC (1/1) Bonds of the face value of Rs. 22.5 crores and also delivered to the Plaintiffs a Bank Receipt bearing No. 1401 dated 30th December, 1991 issued by Canbank Financial Services Limited (Canfina). The said Bank Receipt of Canfina was in favour of the 1st Defendants covering 9% IRFC bonds of the face value of Rs. 50 crores." * has clearly admitted that Citibank was duly discharged of its obligation under original BR 47 dated 19.2.1992 on receipt of BR 1401 dated 30.12.1991 of the face value of Rs. 50 crores issued by CANFINA in favour of Citibank and Citibank's own BR 47 dated 4.3.1992 of the face value of Rs. 22.5 crores.

37. Similar admission was made in the course of trial by the advocate appearing for SCB and recorded by the learned Special Court in its judgment as follows:

"Mr. Vahanvati submits, in my view correctly, that the suit has proceeded on certain admitted facts i.e.:

(a) That the defendants sold to the plaintiffs Rs. 72.5 crores 9% IRFC (1/1) Bonds on 19th February, 1992;

(b) That the defendants received full consideration for this sale;

(c) That the defendants issued Bankers Receipt No. 47 (Ex. B) for Rs. 72.5 crore Bonds:

(d) That on 4th March, 1992, the original Bankers Receipt No. 47 was returned discharged to the defendants on the defendants handing over to the plaintiffs Canfina Bankers Receipt No. 1401 for Rs. 50 crores and their own fresh Bankers Receipt No. 47 for Rs. 22.5 crores." *

38. SCB neither in the plaint nor in the submissions made before the Special Court says that discharge of BR 47 dated 19.2.1992 was in any manner conditional.

39. The fact that original BR 47 was unconditional discharged and returned to Citibank is established by the SCB's endorsement made on the reverse of the original BR 47 dated 19.2.1992 which makes no qualification or condition, which reads:

"BRX for Canfina F.V. 50 crs. Sd."

40. The fact that original BR 47 dated 19.2.1992 was unconditionally discharged is also corroborated by SCB's own document namely BR held Register which records return of original BR 47 to Citibank and exchange with CANFINA BR of Rs. 50 crores without any qualification or condition. The same reads:

"Given to Citi Sd. 4.3.92. Ex. With Canm 50 Cr. Bal. 22.50 Cr."

41. All these facts clearly indicate that SCB discharged the Citibank's BR 47 dated 19.2.1992 and handed over the same to be Citibank. Against the same, Citibank issued to SCB and SCB took Citibank's fresh BR 47 of the face value of Rs. 22.5 crores and CANFINA's BR 1401 of the face value of Rs. 50 crores dated 30.12.1991.

42. Admittedly, the original BR 47 was discharged and delivered back to Citibank. The same has been produced by the Citibank from its possession. The return of original with an endorsement on its reverse duly signed by the officer of SCB amounts to discharge of the B.R. This was the mode of

discharge of BRs. The discharged BR being in possession of the Citibank would raise a presumption in law under Section 114 of the Indian Evidence Act, 1872, that the BR stood duly discharged. Section 114 of the Evidence Act provides that the Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events, human conduct and public and private business, in their relation to the facts of the particular case. Illustration (i) of Section 114 provides that Court may presume 'that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged.' BR 47 dated 19.2.1992 was in the custody of the Citibank. Its possession would raise a rebuttal presumption of the discharge of the said BR. The onus to rebut the presumption was upon SCB. SCB has failed to rebut the presumption by leading any evidence that the obligation under BR 47 did not stand discharged. Finding recorded by the Special Court that there was nothing on the record to show that there was an absolute discharge granted to the Citibank by SCB cannot be accepted. The law laid down by this Court in Citibank's case (supra) to the following effect in paras 32 to 34 is clearly applicable to the present case and the same read as under:

"32. This finding has not been challenged. Further the return of two BRs with the stamp of the SCB on its reverse duly signed by the officer of the SCB also amounts to discharge of the BRs. This was the mode of discharge of BRs. The discharged BRs being in possession of the CitiBank would raise a presumption in law under Section 114 illustration (i) of the Evidence Act, 1872 that the BRs stood duly discharged. Section 114 provides that the Court may presume the existence of any fact which it thinks likely to have happened regard being had to the common course of natural events human conduct and public and private business, in their relation to the facts of the particular case. Illustration (i) provides that Court may presume 'that when a document creating an obligation is in the hands of the obligor, the obligation has been discharged'. The two BRs were in the custody of the Citi Bank. The possession of two BRs with the Citi Bank would raise a rebuttable presumption of discharge of the two BRs. Onus to rebut the presumption was upon the SCB. SCB has failed to rebut the presumption by leading any evidence that the obligation under the two BRs did not stand discharged. Finding recorded by the Special Court that there was nothing on the record to show that there was an absolute discharge granted by the Citi Bank to the SCB cannot be accepted because the two BRs were returned with the stamp of SCB duly signed by an officer of the SCB authenticating that it had been discharged.

33. What is the effect of production of documents by promissor from its custody was considered in Chaudhri Mohammad Mehdi Hasan Khan vs. Sri Mandir Das, (L.R. 39 Indian Appeals 184). In the said case, a suit was filed on the basis of mortgage deed for the recovery of Rs. 62,000/- by way of sale of the mortgage premises. At the time of institution of the suit the plaintiff produced only a copy of the document, alleging that the original had been lost. The defendant in his written statement admitted the execution of the document but alleged that the debt has been discharged. In support of this allegation he produced the original document containing the endorsement of payment by the plaintiff. The Privy Council overruling the decision of the Judicial Commissioner held that in view of the presumption under Section 114 of the Evidence Act the onus was upon the plaintiff to show that the debt was still subsisting which the plaintiff had failed to discharge by producing any evidence. It was held that production of the document by the defendant from his custody raised a rebuttal presumption of the discharge of the debt. *

34. In our view, the law has been correctly stated in the aforesaid case and applying the same ratio,

we hold that production of two BRs by the Citi Bank raised a rebuttable presumption that Citi Bank had discharged its obligation under the two BRs which the SCB failed to dislodge by pleading / leading any evidence to show the circumstances under which the two BRs were returned. In the absence of any explanation by the SCB either in its plaint in Suit No. 22 of 1994 or the written statement filed by it in Suit No. 20 of 1994 whatsoever as to why it had asked for and took dishonoured SGL of CMF in exchange of two BRs raises a presumption under Section 114, illustration (i) that Citi Bank was discharged of its obligation under the BRs i.e. to deliver the Bonds." *

43. SCB has failed to prove that the discharge of original BR 47 dated 19.2.1992 given by its was conditional. It did not lead any evidence. Citibank had denied that the discharge given to it was conditional. According to Citibank, the discharge was voluntary and unconditional. No issue was framed. The burden of disproving discharge of BR 47 and of Citibank's obligation to deliver bonds of SCB lay upon SCB as was held in Citibank's case (supra). Whether discharge is absolute or unconditional is a question of fact. In view of the presumption of discharge arising from illustration (i) of Section 114 of the Evidence Act, the burden of disproving discharge was on SCB and factual evidence had to be led by SCB to prove whether discharge was conditional. No such attempt was made by SCB.

44. SCB voluntarily and unconditionally received and accepted CANFINA BR 1401 knowing fully well that the said BR was non-transferable. The obvious inference is that SCB desired the said CANFINA BR for its own purpose inasmuch as the said BR otherwise is useless. It may be noticed that SCB took BR 1401 within 14 days of the original transaction of 19.2.1992 in exchange. It owned as explanation as to why it took BR 1401, a non-transferable document. SCB has not given any explanation either in its plaint or in evidence as to why it took BR 1401. The intention of SCB was to take BR of CANFINA which was in possession of Citibank. SCB being a business house presumably was aware of the terms of BR of CANFINA from Citibank when it took, accepted and retained the BR of CANFINA from Citibank. The obvious inference is that the SCB did not take BR 1401 from Citibank as an authority to collect the securities or that it was a condition of the discharge. This Court in Citibank's earlier cases (supra) drew an adverse inference under illustration (g) of Section 114 of the Evidence Act against the SCB on similar facts and held that the SCB owed a duty of explanation to the Court as to why it accepted the delivery and retained possession of such an instrument (refer to paras 36 to 38). In the absence of any explanation the implied condition or warranty such as sought to be urged on behalf of SCB could not be imported into the transaction. The plea of implied warranty is one made in desperation and is clearly an after thought. Relevant observations in this regard are contained in paras 40&54 which are reproduced:

"40. The BRs are dated 18th and 19th September, 1991, respectively and on 19th September, 1991 the SCB wrote a letter returning the two BRs and asking of SGLs of Canbank Mutual Fund from the Citi Bank. Proximity of these two dates, clearly indicates that the intention of the SCB was to buy the SGLs of Canbank Mutual Fund otherwise they would not have written the letter on 19th September, 1991 itself. Proximity of these two dates and the manner in which whole transaction was completed indicates that it was done with a purpose or a design. It has not been explained as to how did SCB know that the Citi Bank had in its possession the SGL of CMF. SCB must have known, being a big banking business company, that the SGL issued by the CMF in favour of the Citi Bank was non-transferable. It could not provide any security to them. It had also been dishonoured. Still

SCB asked for and accepted the dishonoured SGL of CMF. If the SGL given to them by the Citi Bank was 'useless' and 'worthless' then why did SCB gladly accept the same without any protest. If it was their case that the SGL of CMF given to them was 'useless' or 'worthless' it should have refused to accept it; far from doing so, the SCB not only accepted it but also acted upon it. It received interest from the third party. It has not been explained as to why third party paid interest of the SCB. Basically, it was for the SCB to explain and answer all these questions which it has failed to do.

54. SCB soon after the payment of Rs. 50 crores and receiving the BRs from the Citi Bank acknowledging its liability to deliver the bonds writes a letter dated 19th September, 1991 asking for and accepting the SGL of CMF. Admittedly, SGL of CMF was not honoured by the PDO twice and an endorsement to that effect had been made on the SGL. As to why a creditor like SCB had asked for and accepted the instrument which was on the face of it unrealizable from the debtor which is even described by it as 'useless and worthless'? It owed a duty of explanation to the Court as to why did it ask for or accepted the delivery of such an instrument. SCB has conspicuously and completely failed to give any explanation either in its plaint or even in evidence. It is difficult to import an implied condition or warranty, as was sought to urged at the hearing, in the absence of such an explanation by the SCB. Contention that the words 'in our favour' be read as introduced by necessary implication in the SCB's request for SGL of CMF and the expression - "We now request you to give us SGLs of Canbank Mutual Fund in exchange of the same" be read as "We now request you to give us SGLs of Canbank Mutual Fund in our favour in exchange of the same" to give it a commercial sense cannot be accepted. Such a re-writing of SCB letter of request of 19th September, 1991 and imposing a qualification in the acceptance of the Canbank SGL by SCB is not permissible. The clear intention of SCB was to ask for and take the SGL of Canbank which was in possession of the Citi Bank. The said SGL was in favour of Citi Bank. SCB as a business house was clearly aware of the terms of an SGL of CMF from Citi Bank when it asked Citi Bank for it and accepted and retained it. For getting the SGL of CMF in its own favour it need not have routed its request through the Citi Bank. It could have straight away approached the Canbank for either buying the 11.5% GOI 2009 Bonds in its favour or for getting the SGL of CMF drawn in its favour. A term can only be implied by way of sense to give efficacy to the transaction which is intended by the parties. Implied terms in law are founded on the presumed intention of the parties. In this case, the intention of the SCB was clear and unambiguous. SCB for its own reasons wanted to take the SGL of CMF in possession of the Citi Bank. The subsequent receipt of interest on the face value of the price of bonds mentioned in the SGL is clear pointer to the fact that the SCB had taken the SGL of CMF from Citi Bank for its own purpose or at the behest of an undisclosed third party who paid interest to SCB. In the absence of any explanation as to how the SCB knew that Citi Bank was in possession of SGL of CMF; as to why it had asked for an instrument which on the face of it was unrealizable by it from the debtor; why did it accept and act upon the same, and further treating itself as a beneficial owner and receiving interest on it, the implied condition or warranty such as it sought to be urged on behalf of SCB cannot be imported in the transaction. The plea of implied warranty is one made in desperation and is clearly an after thought." *

45. For the reasons stated above, it is held that SCB voluntarily and unconditionally received and accepted non-transferable CANFINA's BR 1401 with an obvious inference that SCB desired the said CANFINA BR for its own purpose for the reasons best known to it. #

46. The Special Court fell in error in applying Section 41 of the Indian Contract Act to the facts of the present case. Attempt on the part of the SCB to place reliance on Section 41 of the Indian Contract Act is completely misplaced in the facts of the case as has been held by this Court in Citibank's earlier cases (supra). Section 41 of the Indian Contract Act only provides that the promises cannot have double satisfaction of its claim i.e. from the promisor as well as a third party. It does not give a cause of action to the promisee, but to the promisor to contend that the promisee who has accepted satisfaction from the third party cannot insist on the satisfaction of its claim from the promisor as well. The case of the Citibank would squarely falls under. Section 63 of the Indian Contract Act, as was held in Citibank's earlier cases (supra). It was observed in paras 50 to 52 as follows:

"50. Under Section 63, unlike Section 62, a promisee can act unilaterally and may

(i) Dispense with wholly or in part, or

ii) Remit wholly or in part. the performance of the promise made to him, or

iii) May extend the time for such performance, or

iv) May accept instead of it any satisfaction which he thinks fit.

51. It is Citi Bank's case that SCB of its own asked for and voluntarily accepted two SGLs from Citi Bank as satisfaction which it deemed fit in exchange for the Citi Bank's obligation to deliver GOI bonds of the face value of Rs. 50 crores under the two BRs. Such a plea would fall under Section 63. Special Court concluded that provisions of Section 41 of the Contract Act would be applicable to the facts of the case because the CMF had failed to deliver the GOI's bonds to the SCB, and therefore, the SCB could claim it from the Citi Bank. In our opinion, the Special Court fell in error in applying Section 41 of the Indian Contract Act to the facts of the case. Section 41 of the Indian Contract Act only provides that the promisee cannot have double satisfaction of its claim i.e. from the promisor as well as third party. It does not give a cause of action to the promisee, but, to the promisor, to contend that the promisee who has accepted satisfaction from the third party cannot insist of the satisfaction of its claim from the promisor as well. No case under Section 41 of the Contract Act has been pleaded by the Citi Bank. It no where pleaded that CMF had delivered the bonds to SCB and, therefore, SCB cannot enforce its demand for delivery of bonds against the Citi Bank. Privy Council in *Har Chandi Lal and others vs. Sheoraj Singh and others* (AIR 1916 PC 68) held that Section 41 of the Contract Act applies only where a contract has in fact been performed by some person other than the person bound thereby. What is required by Section 41 is actual performance of the original promise and not a substituted promise. In *Chegamull Suganmull Sowcar vs. V. Govindaswami Chetty and others* (AIR 1928 Mad. 972), it was held that actual performance has to be there for importing the applicability of Section 41. It was held: *

"Much more than a bare promise is necessary under the Section. What it contemplates is actual

performance of the original promise. According to the section, performance 'by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.."

52. The learned Special Court fell in error in holding that Section 41 of the Contract Act would be more appropriately applicable. Section 41 for the reasons set out above would not be applicable to the facts of the present case. It also fell in error in holding that Citi Bank did not plead complete discharge from performing its obligation in terms of Section 63. In our opinion, Citi Bank was specifically pleaded that it stood discharged from the performance of the original obligation on the delivery of SGLs to the SCB, which were asked for and accepted by SCB for reasons best known to it. SCB instead of the original satisfaction accepted another satisfaction, deemed fit by it, in terms of Section 63 of the Indian Contract Act." *

47. Learned Special Court recorded a finding that SCB by accepting BR 1401 of CANFINA at the highest agreed to act as an agent of Citibank and collect bonds of the face value of Rs. 50 crores from CANFINA and appropriate them towards Citibank's obligation to deliver the bonds of the face value of Rs. 50 crores. If CANFINA refused, then, there was no way that the SCB could enforce any claim against CANFINA as there was no contract between CANFINA and SCB. Under the circumstances the obligation of the Citibank to deliver the bonds would not stand discharged unless such time the SCB received the said bonds. **The learned Special Court has erred in recording the above-said finding. The question of conferring authority or constituting SCB against of Citibank for receiving bonds from CANFINA are matters of fact. In the absence of any issue or evidence led by SCB, the burden cast on SCB could not be deemed to be discharged. The finding recorded by the Special Court that SCB acted as an agent of Citibank is not sustainable. #**

48. When SCB discharged Citibank from its obligation under BR 47 by endorsement and delivery thereof to Citibank, it would be inconceivable that simultaneously it would make the discharge conditional on SCB being able to obtain bonds from CANFINA. An agents only for his principal and the collection of bonds, if at all, would be for the benefit of Citibank and not for SCB. It is not even pleaded by SCB that SCB was given authority to appropriate the bonds to itself.

49. Shri Shanti Bhuhanm learned senior advocate during the course of the arguments placed reliance on the following judgments to contend that discharge was conditional. Mohan Lal Jogani Rice & Atta Mills vs. Ramlal Onkarmal Firm & others 1957 AIR(Assam) 133; Maung Chit vs. Roshan 1934 AIR(Rang) 389; Ramdayal vs. Maji Devdiji 1956 AIR(Raj) 12; Kandswami Gounder vs. KP Sivasubramania Iyer 1963 AIR(Madras) 16; Firm Basdeo Ram Sarup vs. Firm Dilsukharai Sewak Ram 1922 AIR(All) 461; Firm Budhu Mal vs. Gokul Chand and others 1926 AIR(Lahore) 328; Har Chandi Lal vs. Sheoraj Singh 1916 AIR(PC) 68; Chegamull Suganmull vs. V. Govindswami 1928 AIR(Mad) 972.

50. Most of these judgments were cited before us during the course of the hearing of the Citibank's case (supra). The same were distinguished and after elaborate discussion, it was held that none of these cases would be applicable to the facts of the present case (refer to para 57). It was observed in

para 59 as follows:

"In the present case, as stated in the foregoing paragraphs, SCB had substituted its original satisfaction by asking for and taking SCB of CMF as deemed fit for its own reasons which have not been disclosed to the Court. The cases cited by Mr. Nariman referred to in this paragraph under the Circumstances would have no applicability." *

51. In view of our discussion in the Citibank's earlier cases, we need not to discuss individual authorities cited at the bar.

52. A faint attempt was made in the end to contend that even if the Court comes to the conclusion that as a matter of fact Citibank is discharged under Section 63 of the Indian Contract Act the decree should not be reversed and the same should only be modified by this Court in exercise of its special jurisdiction under Article 142 to do complete justice between the parties. In case both the decrees in the suit Nos. 24 of 1994 and 1 of 1995 are reversed, CANFINA would be unjustly enriched and SCB would lose Rs. 50 crores with interest and such a result would be contrary to all notions of justice. It was contended that irrespective of any view this court may take on documents, the Court has the power to do complete justice between the parties under Article 142 of the constitution of India by maintaining the decree in favour of SCB. Suit No. 24 of 1994 and Suit No. 1 of 1995 were back to back suits and the enforcement of decree in Suit No. 1 of 1995 was contingent upon a decree being passed in Suit No. 24 of 1994. Acceptance of the submission of SCB would be that this Court would be passing a decree against CANFINA indirectly. Submission of SCB that since a decree has been passed in the contingent suit, to the extent of decretal amount paid in the contingent suit, suit filed by SCB should be decreed, cannot be accepted. Similar submission was rejected after elaborate discussion by this Court in Citibank's case (supra). It was observed that 'acceptance of the submission of SCB would mean that though SCB's suit does not deserve to succeed but still it be maintained by passing a decree in the contingent suit which cannot be done. It would be a travesty of justice rather than doing justice.' (refer to para 60).

53. For the reasons stated above, Civil Appeal No. 7426 of 1996 filed by Citibank is accepted. Judgment and decree passed by the Special Court in Suit No. 24 of 1994 is set aside and the suit is ordered to be dismissed with costs throughout.

54. As a consequence to the aforesaid, **Citibank becomes entitled to restitution of the total amount paid by it to Standard Chartered Bank (principal and interest) along with interest @ 12% p.a. from the date of receipt of payment by SCB provided it is paid on or before 1.9.2004 and in default to pay the interest @ 15% p.a. from the date of receipt of payment till it is repaid by the Standard Chartered Bank. Citibank would also be entitled to receive back the amount of costs it had paid to Standard Chartered Bank under the decree of the Special Court but the same would not carry any interest.** # Though the appellant had prayed that the interest be granted at the same rate at which it was granted by the Special Court (i.e. 20% p.a.) but we have reduced the same keeping in view that interest rates have come down substantially in the recent years.

55. Costs in this appeal are assessed at Rs. 20 lakhs. Citibank would also be entitled to the costs before the Special Court of the equivalent amount which were awarded against it by the Special Court while decreeing the suit against it.

Civil Appeal No. 9063 of 1996

56. This appeal has been filed by the CANFINA against the decree passed against it in Suit No. 1 of 1995. In Civil Appeal No. 7426 of 1996 we have recorded a finding that Suit No. 1 of 1995 filed by the Citibank was a back to back suit to save itself in case a decree was passed against it in the suit filed by the Standard Chartered Bank in Suit No. 24 of 1994. In other words, it was a contingent suit based on the result of Suit No. 24 of 1994. Learned senior counsel appearing for the CANFINA had addressed arguments at length supporting the submissions made on behalf of Citi Bank against the Standard Chartered Bank. We need not deal with the contentions raised by learned senior counsel as we have accepted the Civil Appeal No. 7426 of 1996 and set aside the decree passed against the Citibank in Suit No. 24 of 1994. The consequence of the acceptance of the said appeal would be that this appeal is accepted. Accordingly, the appeal filed by the CANFINA is accepted and the decree passed against it in Suit No. 1 of 1995 is set aside and the suit is ordered to be dismissed.

57. As a consequence to the aforesaid CANFINA becomes entitled to restitution of the total amount paid by it to the Citibank (principal and interest) along with interest @ 9% p.a. from the date of payment provided it is paid on or before 1.9.2004 and in default to pay the interest @ 12% p.a. from the date of payment till it is repaid by the Citibank. Though the appellant had prayed for higher rate of interest but we deem it appropriate to grant the same rate of interest which had been granted by the Special Court. While decreeing the suit No. 1 of 1995. We decline to grant costs in the appeal as the Special Court had not granted any costs while decreeing the suit of Citibank. The parties in this suit shall bear their own costs throughout.

Civil Appeal No. 9138 of 1996

58. In view of acceptance of Civil Appeal No. 9063 of 1996 and as a consequence dismissal of the suit No. 1 of 1995 filed by the Citibank, this appeal has become infructuous and disposed of as such.

59. The appeals stand disposed of in the above terms.

Order

Hon'ble Justice Bhan

This appeal was directed to be tagged with Civil Appeal No. 7941 of 1995 by this Court's order dated 15.9.1997, decided on 8th October, 2003 and reported in . In view of the acceptance of the

said appeals and dismissal of the suit filed by the SCB, this appeal has become infructuous and is dismissed as such.