

J. M Financial Reconstruction Co. Pvt. Ltd. v. International Hometex Ltd. & Ors.

J. M Financial Reconstruction Co. Pvt. Ltd.

...Appellant

International Hometex Ltd. & Ors.

...Respondent

Case No: Appeal No. 219/2013

Date of Judgement: 20/02/2023

Judges:

Mr Justice Ashok Menon, Chairperson

For Appellant: Mr Charles D'Souza i/b M/s. Consulta Juris, Advocates.

For Respondent: Ms Kamini Yadav, i/b M/s M. V. Kini & Co., Advocates.

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Facts:

This is an order passed in Appeal No. 219/2013 by the Debts Recovery Appellate Tribunal, Mumbai. The appellant, J. M Financial Reconstruction Co. Pvt. Ltd., is an Asset Reconstruction Company and an assignee of a debt from the Indian Overseas Bank (IOB). The respondents include International Hometex Ltd. (in liquidation), its directors (Respondents Nos. 2 to 4, who were personal guarantors), and other creditor banks having pari-passu charge over the mortgaged assets (Respondents Nos. 5 to 7). IOB had provided credit facilities and a term loan to International Hometex Ltd., for which the directors executed personal guarantees and mortgaged properties. The debt was

defaulted, and IOB filed an Original Application (O.A.) No. 2 of 2010 before the Debts Recovery Tribunal (DRT) for recovery of the debt and enforcement of the mortgage. The debt was subsequently assigned by IOB to the appellant, who got itself substituted in the Original Application before the DRT. The DRT allowed the Original Application against Respondents Nos. 1 to 3 but dismissed it against Respondent No. 4, as she did not execute a subsequent letter of guarantee dated 28/12/2005.

Court's Elaborate Opinions:

The court held that the DRT was not justified in excluding Respondent No. 4 from the liability of the debt due to the appellant. The court relied on the clauses in the initial deed of guarantee executed by Respondent No. 4, which stated that it was a continuing guarantee and would remain in force until canceled in writing. The court also noted that Respondent No. 4 did not plead in her written statement that the continuing guarantee was revoked or that there was a novation of contract. The court allowed the appeal and set aside the DRT's judgment dismissing the O.A. against Respondent No. 4, making all respondents jointly and severally liable.

Arguments by the Appellant:

The appellant's counsel, Mr. Charles D'Souza, argued that the initial deed of guarantee executed by Respondent No. 4 indicated that it was a continuing guarantee, binding her to subsequent changes in credit facilities. The counsel drew the court's attention to clauses 9 and 10 of the deed of guarantee, which stated that it was a continuing guarantee and would remain in force until canceled in writing. The counsel also pointed out that Respondent No. 4 did not plead in her written statement that the continuing guarantee was revoked or that there was a novation of contract. The counsel relied on Supreme Court decisions in *Narinder Pal Agarwal of Mumbai, Indian Inhabitant vs. Saraswat Co-Operative Bank Ltd., A Multistate Co-Operative Bank and Ors.* (2019 SCC OnLine Bom 45), *H.R. Basavaraj(dead) by his LRs. & Ano. Vs. Canara Bank & Ors.* (2010) 12 SCC 438, and *Sitaram Gupta vs. Punjab National Bank and Ors.* (2008) 5 SCC 711 to support the argument that a

continuing guarantee remains binding unless revoked or discharged.

Cases Cited:

Narinder Pal Agarwal of Mumbai, Indian Inhabitant vs. Saraswat Co-Operative Bank Ltd., A Multistate Co-Operative Bank and Ors. (2019 SCC OnLine Bom 45)

H.R. Basavaraj(dead) by his LRs. & Ano. Vs. Canara Bank & Ors. (2010) 12 SCC 438

Sitaram Gupta vs. Punjab National Bank and Ors. (2008) 5 SCC 711

Sections and Laws Referred:

Section 130 of the Indian Contract Act (revocation of continuing guarantee)

Section 133 of the Indian Contract Act (discharge of surety by novation)

Chapter 8 of the Indian Contract Act (concerning indemnity and guarantee)