

UNITED BANK OF INDIA  
v.  
RAMDAS MAHADEO PRASHAD AND ORS.

NOVEMBER 4, 2003

[S.N. VARIAVA AND H.K. SEMA, JJ.]

*Contract Act, 1872—Section 62—Enforcement of contract—Dispute between parties—Suit—During pendency parties arriving at Memorandum of Understanding and entering into compromise—However, parties not complying with the terms and conditions stipulated in the Memorandum of Understanding and acting upon them—Effect of—Held: A party in breach cannot seek to enforce a contract—The Memorandum of Understanding does not amount to concluded contract or novation of contract under Section 62.*

**Respondent filed suit regarding under-writing commitment in public issue against appellant-bank. During pendency of the suit, parties arrived at Memorandum of Understanding (MOU) in which a compromise was entered into. MOU stipulated certain conditions and the parties were to comply with the same.**

**The question which arises for consideration is these appeals is whether the MOU, entered into between the parties has been acted upon and complied with by the parties.**

**Respondent Nos. 1 and 2 contended that in view of the MOU signed by the parties the original contract stood substituted by the MOU and it is a fit case where Section 62 of the Contract Act can be invoked.**

**Allowing the appeals, the Court**

**HELD : 1.1. In the instant case, the respondents did not withdraw the suit filed by them against the United Bank of India, which is the condition precedent stipulated in clause (1) of the MOU. The respondents also did not pay the guarantee liability and also no compromise petition was filed before an appropriate court. Therefore, by no stretch of imagination it can be said that the terms and conditions stipulated in the MOU had been complied with and acted upon by the parties. Subsequent**

**A** to the MOU there was also a lot of correspondence between the parties by exchanging letters giving offers and counter-offers which shows that the parties failed to arrive at a consensus even on what were the terms of the MOU. Thus, it is clear that there was no concluded contract nor was there any novation. Even otherwise, there has been non-compliance of the terms and conditions of the MOU by the respondents and a party in breach can hardly seek to enforce a contract. Therefore, the MOU does not amount to novation of contract as envisaged under Section 62 of the Contract Act. [133-E-H; 134-A-B]

**C** CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8132-8133 of 2001.

From the Judgment and Order dated 30.5.2001 of the Debts Recovery Appellate Tribunal, Calcutta in A. No. 23/2000 and 6 of 2001.

**D** Dhruv Mehta, Mohit Chaudhary, Ms. Shalini Gupta for M/s K.L. Mehta & Co., for the Appellant.

Ranjit Kumar, Rana Mukherjee, Siddharth Gautam, Goodwill Indeevar and Mrs. Sumita Ray for the Respondents.

The Judgment of the Court was delivered by

**E** SEMA, J. Heard Mr. Dhruv Mehta, learned counsel for the appellant and Mr. Ranjit Kumar, learned Senior advocate on behalf of respondent Nos. 1 and 2 at length.

**F** These appeals are directed against the judgment and order dated 30.05.2001 passed by the Debts Recovery Appellate Tribunal (DRAT), Calcutta. Two appeals were preferred before the DRAT. Appeal No. A-23/2000 was preferred by the appellant and Appeal No. A-6/2001 was preferred by the respondents herein. By the impugned judgment Appeal No. A-23/2000 was dismissed and Appeal No. A-6/2001 was allowed. In view of the order that we propose to pass, it may not be necessary to delve into the facts leading to the filing of the present appeals. Suffice it to say that during the pendency of the suit, a Memorandum of Understanding (MOU) was arrived at, in a meeting held on 18.05.1994 between the parties in which a compromise was entered into, on the sole basis of which the order impugned was rendered.

**H** The spinal question raised in these appeals, therefore, is centred around

as to whether the MOU, entered into between the parties on 18.05.1994 and forwarded by letter dated 20.05.1994, has been acted upon and complied with by the parties.

After considering the MOU, the Tribunal arrived at the following conclusion :

“In order to resolve the dispute between the parties it is necessary to interpret the terms of compromise as conveyed by the appellant bank by letter dated 20.05.1994. Since, there was talk of compromise between the parties which actually took place on 18.5.1994 at 3.00 p.m., the consensus arrived at must be taken to be a new contract between the parties and in the event the terms of this contract is obeyed by any party the other side cannot get away from it on the principle laid down in section 62 of the Contract Act. The clause-II of the enclosure containing the terms of the compromise fixes these settled amount at Rs. 33.14 lakhs plus interest at 6% thereon till the date of liquidation which is fixed at 12 months from the payment of first instalment of 12 lakhs which is to be paid within a month from the date of arriving at the MOU. From the series correspondence which I have referred earlier it is amply clear that the first instalment was paid by the opposite party in time and the liquidation of the agreed amount was also made within the terms of the MOU. So far as the Bank guarantee is concerned, it is no body case that such guarantee has actually been invoked and as such the opposite party is under no obligation to pay the said sum to the Bank. The only question remains in dispute is the calculation of interest rather the date time from which such interest is to be calculated. The MOU does not mention the time from which such interest is to be calculated and as such in my opinion since a new contract has invoked by way of talk between the parties on 18.5.1994 the claim of interest cannot go earlier to the said period. Because the Bank actually waived its the original claim of a much more higher sum by agreeing to remain contended with 33.14 lakhs as suit amount. As such, the subsequent contention of the Bank as conveyed by letter dated 12.6.1995 enhancing the suit amount as 47.22 lakhs cannot stand. It further appears that inspite of the fact that the opposite party actually obeyed the terms of MOU in toto, the bank did not adhere to the terms of the said agreement and did not release the title deeds as claimed by the opposite party. It is surprising that in course of the written note it has

A been alleged on behalf of the bank that the MOU reveals that the mind of one office of the Bank alone and there was no resolution of the Board of Directors to that effect on the said date. It is true that there was some exchanging of letters between the parties after the MOU. But that does not mean that the MOU loses its legality and significance, rather such correspondence were made around between the parties due to wrong interpretation given to the said MOU by one party and non compliance of the terms by the Bank. Therefore, the MOU creating a new contract between the parties does not lose its force because of such correspondence. Accordingly, I came to the conclusion that the Bank is precluded from claiming any higher rate of interest or claiming the interest from the debt of the claim case in view of the terms of MOU. Accordingly the decision of the Tribunal below repayment of further sum of Rs. 12.75 lakhs cannot stand. Needless to say, the claim of the Bank for enhanced sum after calculating on the basis of enhanced rate of interest also does not stand since the opposite party complied with the terms of MOU by making payments strictly in conformity with the said agreement.”

At this stage, it will be useful to reproduce the MOU, entered into between the parties on 18.05.1994.

- E “1. M/s. Swaika Vanaspati Products Ltd. will withdraw the suit against UBI regarding under-writing commitment in SVPL Public Issue.
2. The suit against SOM may be is settled for Rs. 33.14 lacs (suit amount) plus simple interest @ 6% thereon till the date of liquidation. The period for liquidation kept at 12 months from the date of 1st instalment. The first instalment of Rs. 12.00 lacs is to be paid within one month preferably before 30th May, 1994. The sum of Rs. 2.33 lacs which is the guarantee liability, is to be honoured due to invocation of guarantee, will have to be paid by the borrower additionally but will not bear any interest. To sum-up, the total dues will be suit-filed amount of Rs. 33.14 lacs plus 6% interest at simple rate on Rs. 33.14 lacs till liquidation on reducing balance plus Rs. 2.33 lacs (which is the guarantee liability). The consent decree to this effect will be filed in the appropriate court after receipt of Rs. 12.00 lacs. Securities charged to the Bank shall only be released after full and final payment.
- G
- H 3. The payment of the aforesaid amount will be made in instalments.

The first instalment of Rs. 12.00 lacs will be made within 30 days and then the residual amount will be repaid by 4/5 instalments in 12 months. On receipt of the first instalment of SOM compromise amount of Rs. 12.00 lacs, UBI will participate in rehabilitation/restructuring of SVPL a/c. It will parallelly discuss with IRBI for the expansion scheme and will also subscribe to equity shares as required under the project.

4. In case of default of instalment payment of SOM as prescribed above, the entire outstanding liability will attract normal rate of interest with quarterly rests.

5. UBI will pay upto date fixed-deposit interest on the money received in SVPL Public Issue and lying with UBI.”

A fascicule reading of the conditions stipulated in the MOU, it clearly posits that the parties were to comply with the conditions stipulated by taking the following action :

- (a) to withdraw the suit filed by them against the appellant;
- (b) to pay the guarantee liability of Rs. 2.33 lacs; and
- (c) to file a compromise petition in terms of MOU before an appropriate court.

Undisputedly, the respondents did not withdraw the suit filed by them against the United Bank of India, which is the condition precedent stipulated in clause (1) of the MOU. The respondents also did not pay the guarantee liability of Rs. 2.33 lacs. No compromise petition was filed before an appropriate court. Therefore, by no stretch of imagination it can be said that the terms and conditions stipulated in the MOU had been complied with and acted upon by the parties. Apart from what has been said, subsequent to the MOU there was also a lot of correspondence between the parties by exchanging letters giving offers and counter-offers, as would be revealed in the letters dated 16.6.94, 23.12.94, 12.6.95, 15.6.95 and 19.6.95. All these correspondence would go to show that the parties failed to arrive at a consensus even on what were the terms of the MOU. Thus, it is clear that there was no concluded contract nor was there any novation.

As already noticed, no compromise petition was also filed in an appropriate court in terms of Order 23 Rule 3 of Civil Procedure Code.

A Mr. Ranjit Kumar, learned senior advocate contended that in view of the MOU signed by the parties the original contract stood substituted by the MOU and it is a fit case where Section 62 of the Indian Contract Act can be invoked. We have already said that there was no concluded settlement or novation. Even otherwise, there has been non-compliance of the terms and conditions of the MOU by the respondents and a party in breach can hardly seek to enforce a contract. Therefore, the MOU does not amount to novation of contract as envisaged under Section 62 of the Indian Contract Act. The contention of Mr. Ranjit Kumar is, therefore, legally untenable.

C For the reasons aforesaid, we allow the appeals. The order of the Appellate Tribunal dated 30th May, 2001 dismissing the appeal No. A-23/2000 and allowing the appeal A-6/2001 is set aside. Consequently, Appeal No. A-23/2000 before the DRAT is allowed and Appeal No. A-6/2001 stands dismissed. Parties are asked to bear their own costs.

N.J.

Appeals allowed.