(1987) 09 CAL CK 0019

Calcutta High Court

Case No: F.M.A. No. 273 of 1987

M/s. Gupta Biscuits (P) Ltd.		APPELLANT
	Vs	
United Commercial Bank and Another		RESPONDENT

Date of Decision: Sept. 11, 1987

Acts Referred:

- Constitution of India, 1950 - Article 226
- Negotiable Instruments Act, 1881 (NI) - Section 31, 32, 61, 64, 84(3)

Citation: 92 CWN 618

Hon'ble Judges: M.N. Roy, J; Dilip Kumar Basu, J

Bench: Division Bench

Advocate: C.N. Mukherjee and Gauri Shankar Pal, for the Appellant;Hari Narayan Mukherjee, for the Respondent

Final Decision: Allowed

Judgement

M.N. Roy, J.

This appeal from original order is directed against the judgment and order dated 16th January 1987, passed by a learned Single Judge in C.O.No. 15186 (W) of 1986. By such determinations, the application which was moved and on the basis whereof the con corned Civil Order was issued, was dismissed, holding inter alia amongst others that in the facts and circumstances of the case, the parties should file a suit to establish their rights. The appellant M/s. Gupta Biscuits (P) Ltd., is an existing Private Limited Company, registered under the Companies Act, 1956 and has its Registered office at N.S. Road, Asansol, Burdwan and the factory is situated at Karangapara Road, Durgapore, Burdwan. It was the of the appellant that it was engaged in manufacturing and selling of biscuits of various types and for the convenience of operation and for carrying on the day to day monetary affairs, a Current account with the United Commercial bank, Assansol was opened. It has also been stated that in the course of the business with the said Bank, deposits of

money, cheques etc. for realisation and Credit in favour of the appellant were made and cheques were also issued for withdrawal of the amounts lying with the said Bank in the concerned Current Account.

2. The appellant, has stated that the regular operation and exchanges of business between it and the Bank as mentioned hereinbefore, went on smoothly till September 1986, but the trouble was created by the said Bank, by not hounouring the cheques drawn by the appellant since October 1986, although the appellant had and still has sufficient funds in the concerned Current Account with the Bank as mentioned above. It has been stated that considering the conduct of the Respondent Bank, the appellant wanted to close its Account with them and accordingly, a resolution to that effect was passed in the Board meeting of the appellant on 1st October 1986 and the same was communicated to the Bank by the letter of the same day. The said letter has been disclosed as Annexure - A to the writ petition and the same was signed by Anil Kumar Gupta, Sunil Kumar Gupta, Manju Gupta and Arun Kumar Gupta.

3. It was the case of the appellant that in course of business, it had deposited some Drafts in the Current Account and issued cheques for withdrawal of the amount including the amount of the encashed Drafts, but the Respondent Bank declines to allow such withdrawal and informed the appellant that the Andhra Bank at Asansol, another Nationalised Bank, with whom the appellant had also a Current Account, had raised objection for running Accounts with two separate Banks by the appellant and on such information, the appellant approached the said Andhra Bank, who after- hearing it, withdrew the objection by writing a letter dated 6th October 1986, which was also disclosed by Annexure-B to the petition.

4. It has been alleged that thereafter, the appellant issued another cheque for Rs. 90,000/- on 21st October 1986, in favour of Andhra Bank, but they refused to credit the said amount in favour of Andhra Bank, on the ground that "drawer''s signature differs" and when the appellant wanted to sign the concerned cheque again, the Respondent Bank disallowed such signature to be put in. It was also the case of the appellant that on 29th October 1986, another letter was addressed to the Respondent Bank, stating inter alia amongest others that on account of their refusal to honour the cheque inspite of having sufficient funds in the account, the appellant has suffered and was suffering a loss of Rs. 50,000/- per day and the said Respondent Bank was further requested to issue a Bank Draft in favour of M/s. Durgapur Project Ltd., for Rs. 81,871.61P and to remit the balance of the funds as available, to Andhra Bank. The Respondent Bank, it has been stated, in their turn, refused to take any action in the matter and on 4th November 1986, the appellant also issued a cheque for Rs. 82,035.61P in favour of the Respondent Bank, for issuing a Demand Draft in favour of the said Durgapur Project Ltd. for Rs. 81,841.61P. The appellant has stated that the commission of the Bank amounting to Rs. 164/- was also paid, but the Respondent Bank returned the concerned cheque

and other forms as filed, without issuing the Draft in favour of the Durgapur Project Ltd. It has also been stated that the Respondent Bank requested the appellant on 4th November 1986, to bring the Cheque Book on the plea of taking the same on finalisation of the accounts and closing the accounts. The appellant has stated that on bonafide belief or on believing the assurance, it deposited the concerned Cheque Book, but the Respondent Bank neither closed the account by paying the balance available nor issued the Banker''s Draft as mentioned hereinbefore, in favour of Durgapur Project Ltd.

5. Thereafter, the appellant has stated, that another attempt was made by placing a Cheque on 21st October 1986, after correction of the signature on the cheque dated 10th November 1986, for drawing money lying with the Respondent Bank through the Andhra Bank, for the purpose of meeting the urgent payments of the creditors, specially of the said Durgapur Project Ltd., who was threatening to discontinue the power line for non payment of dues. But the Respondent Bank again refused payment of the said cheque, out of funds which were admittedly available with them on the ground that "the persons who have presented the cheque through the Andhra Bank for enashment are borrowers in our account Hence the payment was withheld," It was the further case of the appellant, that due to non availability of the funds lying in deposit with the Respondent Bank, it has suffered irreparable loss and injury in the field of production and selling of the products and was also facing closer of business due to the threatened disconnection of powers line by the Durgapur Project Ltd. It appears that the learned Advocate for the appellant, on 21st November, 1986, had addressed a letter to the said Durgapur Project Ltd., explaning the difficulties as felt and experienced by his client and requesting the said Durgapur Project Ltd. to wait for sometime without disturbing the supply of electrical energy and such appeal was made as, four hundred workmen would be throw out of employment for such disconnection, if any.

6. The appellant has claimed and contended that for any alleged personal liabilities of the Directors, even if such allegations are true, it was not proper for the Respondent Bank to withhold payment and the money lying with the Respondent Bank cannot be withheld and the action in such withholding, was totally arbitrary and without jurisdiction. It was contended that when money was available with the Respondent Bank on account of the appellant, they were bound to release the same on demand as per Banking Rules and Regulations and the action in not honouring such obligation, was malafide and a statutory body like the Bank in question, was required not to act unfairly or arbitrarily, which incidentally has been the case in this proceeding and for such inaction of the Respondent Bank, the appellant''s rights have been jeopardised and injured.

7. The affidavit-in-opposition on behalf of the Respondents was dated 5th January 1987 and the same was filed through Shri Santosh Narayan Ghosh, manager of United Commercial Bank. Asansol Branch.

8. It has been stated by the deponent that Asansol Consumer Agencies, of which Anil Kumar Gupta is a proprietor opened with the Bank, a cash credit account with overdraft facilities and Arun Kumar Gupta, Sunil Kumar Gupta and Manju Gupta were the guarantors of the said Account. All the persons as mentiond above, it would appear, were and are the Directors of the appellant and in course of business, the said Asansol Consumer Agencies became liable to pay at the close of 15th March 1986, a sum of Rs. 1,8700,662.76P, after adjusting all credits with up to date interest. It has been indicated that inspite of repeated demands by the Respondent Bank, the said depositor failed to pay the amount and accordingly, the Respondent Bank had to file Title Suit No. 17 of 1986 in the Court of the Additional District Judge, Asansol on 17th March 1986, for realisation of the amount as mentioned above, against Anil Kumar Gupta as the proprietor of the said Consumer Agencies. In fact, the said Anil Kumar Gupta was made the principal defendant and other persons, who stood as guarantors and were and are the Directors of the appellant, were also made defendants. Admittedly, the concerned suit is pending and a prayer has been made in the said suit for appointment of a Receiver and for such order for further reliefs under the provisions of the Civil Procedure Code. It is also an admitted fact that no such order for appointment of Receiver or any other appropriate order has been obtained as yet.

9. It was the case of the deponent that with the object of defrauding the Respondent Bank, the appellant has opened a cash credit account with the local Branch of Andhra Bank, wherefrom the appellant has taken a lump sum advance. There is no doubt that the said Andhra Bank, is also a Nationalised Bank. The deponent has stated that the said Andhra Bank gave an advice for taking appropriate steps, so that the appellant may not run away with the money deposited with the Respondent Bank in the meantime. It has also been stated that the cheques in question, as drawn by the appellant since October 1986, were dishonoured for good reasons and there was no illegality or any irregularity. The deponent has further pointed out that the balance of the appellant with the Respondent Bank on 30th June 1986, stood at Rs. 878.47P, but such balance was increased to Rs. 93,348.47P, by depositing some cheques from 27th to 29th September 1986. The said money, according to the deponent should have been deposited by the appellant with the Andhra Bank, where a cash credit account had been opened earlier and according to him, with the illegal and malafide motive of defrauding a Nationalised Bank, such steps were taken. He has also pointed out that on 28th December 1986, one Shri A. K. Lai Gupta, Advocate of the appellant at Asansol, addressed a letter to Sri Sunil Mukherjee, Advocate of the Bank at Asansol, on the subject of settlement of the dues of the. Consumer Agencies as mentioned above and according to the deponent, the purport of that letter would evidently make it clear that the appellant has a studio in the name of Kamalalaya and M/s. Asansol Consumers Agencies were owned by the same person and they were and are sister concerns.

10. The deponent has also poinetd out that the concerned Account of the Appellant was to be operated by any one of the Directors, but the cheque which was presented for payment was signed by the Managing Director of the Appelant and that was a good and valid reason to withhold payment. It has also been claimed that from the facts, it would show and establish that the Directors of the Appellant, who are Defendants in T.S.No. 17 of 1986 wanted to defraud the Respondent Bank by withdrawing the entire money, which was lying in deposit. It has further been stated that steps in the matter have been taken bonafide to safeguard the interest of the Respondent Bank.

11. We have indicated earlier the ultimate findings of the learned Judge and he has also recovered the submission of the Respondent Bank that they would be entitled to liquidate their debt from the assets of the Appellant, apart from recording that an attachment proceeding has already been initiated and no steps have been taken in view of the pending writ petition. This finding was claimed by Mr. Mukherjee, appearing for the Appellant to be baseless and without any evidence.

12. It was further contended by Mr. Mukherjee that the Respondent Bank could not authoritatively refuse payment of the cheque when the Appellant has admittedly the Bank Account with them and in that Account the Appellant had sufficient amount. Such action in dishonouring the concerned cheque, when the Appellant had admittedly enough and sufficient money in deposit, was claimed to be unauthorised, arbitrary and malafide, apart from being irregular. It was claimed that when admittedly no restraint order or any order of attachment or any order for appointing a Receiver was obtained, the action of the Respondent Bank, was also claimed to be unauthorised. It was also claimed that the stand taken by the Respondent Bank, in refusing to honour the cheque because the signatories of the same were defaulters in respect of another Account was absolutely frivolous and unauthorised. It was also indicated that even if the above steps were permissible and possible, the stoppage of money belonging and available to the Appellant was improper, not bonafide, arbitrary and illegal, apart from being irregular.

13. On a reference to the respective provisions of the Companies Act, 1956, it was claimed and contended by Mr. Mukherjee that the Appellant Private Ltd. Co., in this case had and has a status of its own, different from the said Consumer Agency, which is a Proprietory concern of one of the Directors of the Appellant and that being the position, neither the Appellant Private Ltd. Co., nor its Directors will be liable or responsible for the acts and debts of any of its Directors, acting as the Proprietor of the Consumer Agency and in fact the Appellant and the said Consumer Agency are entirely separate and distinct entities. In support of his submissions and also to indicate the distinction and the effect of incorporations as in this case reference was made to the case of AIR 1937 279 (Privy Council) , and where it has been indicated that the distinction should be clearly marked, observed and maintained between an incorporated company''s legal entity and its actions, assets,

rights and liabilities on the one hand, and the individual share-holders and their actions, assets, rights and liabilities on the other hand and if directors misuse their powers as directors for the Company of no effect, and the Court will hot inquire whether the Company derived any benefit from the transaction. Mr. Mukherjee pointed out specifically that the Appellant and the said Consumer Agency were and are separate, different and distinct entries even though the Proprietor of the said Consumer Agency is also a Director of the Appellant and for that fact also the Directors of the Appellant or the Appellant cannot be held or made liable for the laches of the Proprietor of the Consumer Agency and he wanted to draw sustenance for such submissions on the basis of the determinations in the case of Bacha F. Guzdar Vs. Commissioner of Income Tax, Bombay, , where dealing with the positions of shareholders of a Company and a partner of a Partnership firm, it has been indicated the argument that the position of share-holders in a Company is analogous to that of partners ''inter se'' is wholly inaccurate Partnership is merely an Association of persons for carrying on the business of partnership and in law firm name is a compendious method of describing the partners. Such is, however, not the case of a Company which stands as a separate juristic entity distinct from the share-holders. That case has also indicated on the basis of the finding that a share-holder acquires a right to participate in the profits of the Company may be readily conceded but it is not possible to accept the contention that the share-holder acquires any interest in the assets of the Company. A share-holder has not got a right in the property of the Company. There is nothing in the Indian Law to warrant the assumption that a share-holder who buys shares buys any interest in the property of the Company Which is a juristic person entirely distinct from the share-holders. The true position of a share-holder is that on buying shares an investor becomes entitled to participate in the profit of the Company in which he holds the shares if and when the Company declares subject to the Articles of Association, that the profits or any portion thereof should be distributed by way of dividends among the share-holders. He has undoubtedly a further right to participate in the assets of the Company which would be left over after winding up but not in the assets as a whole, that the position of a Company is distinct from the share-holders.

14. It was also submitted by Mr. Mukherjee that a Company registered under the Companies Act is also a different and distinct person and its accounts cannot be Interfered with for the lachas of the Directors. To establish the proposition, reference was made to the case of Rustom Cavasjee Cooper Vs. Union of India (UOI), , where it has held that a Company registered under the Companies Act is a legal person, separate and distinct from its individual members. Property of the Company is not the property of the share-holders. A share-holder has merely an interest in the Company arising under its Articles of Association, measured by a sum of money for the purpose of liability, and by a share in the profit. Again a Director of a Company is merely its agent for the purpose of management. The holder of a deposit account in

a Company is its creditor he is not the owner of any specific fund lying with the Company. A shareholder, a depositor or a Director may not therefore be entitled to move a petition for infringement of the rights of the Company, unless by the action impugned by him, his rights are also infringed.

15. As indicated earlier, Mr. Mukherjee submitted that when admittedly the Appellant had its funds with the Respondent Bank, they were bound to honour the cheque and for such submissions, he referred to section 31 of the Negotiable Instruments Act and then relied on the case of Mohanlal Malpani v. The Loan Company of Assam Ltd., Shillong, AIR 1960 Assam 191, where it has been observed that a cheque is a negotiable instrument and the payee is the holder in due course, if the payee presents the cheque beyond reasonable time, the liability of the drawer stands discharged. The payee therefore becomes a creditor of the bank in respect of the amounts of the cheques u/s 84(3) of the Act, and can claim a set-off in respect of these amounts, apart from indicating a negotiable instrument differs from an ordinary contract in many respects. In the case of a negotiable instrument the absolute benefit of the contract is attached to the ownership of the document which according to ordinary rules would be only evidence of the contract. The proof of ownership is facilitated by prescribing a mode of transfer which makes the instrument itself an authentic record of the successive transfers and the proof of the transfer is dispensed with by presuming the bona fide possessor of the instrument to be the true owner. The transfer of a negotiable instrument differs from the assignment of a contractual right in three different ways. First, in the case of a transfer of a negotiable instrument there is no necessity that the person liable for payment should be notified by the new holder of the change of ownership. Secondly, unlike the assignee of a contractual right, the transferee of a negotiable instrument does not take subject to equities. A holder for value who takes an instrument without notice of any defect in the title of the person who negotiated it to him acquires a perfect title. Thirdly, the rule that consideration must move from the promisee, which applies to contracts in general, does not apply to a negotiable instrument. For the holder can sue for payment without proof that he himself gave value. Mr. Mukherjee also relied on and referred to the case of Punjab National Bank Ltd. v. Arura Mal Durga Das & Anr., AIR 1960 Pun 632, which has observed that a Bank has no lien upon the deposit of a partnership for a balance due by one of the partners, apart from indicating that the right of a Bank to apply a deposit to an indebtendness due from the depositor, results from the right of set-off, which obtains between persons occupying the relation of debtor and creditor, and between whom there exist mutual demands. Mutuality is essential to the validity of a set off, and in order that one demand may be set off against another, both must mutually exist between the same parties. While on his submission on. Negotiable Instruments Act, Mr. Mukherjee also referred to the case of Seth Jagjivan Mavji Vithlani Vs. Ranchhoddas Meghji, , where it has been indicated that the drawee of a negotiable instrument is not liable on it to the payee, unless he has accpeted "it. u/s

32, the liability of the drawee arises only when he accepts the bill. There is no provision in the Act that the drawee is as such liable on the instrument, the only exception being u/s 31 in the case of a drawee of a cheque having sufficient funds'' of the customer in his hands: and even then, the liability is only towards the drawer and not the payee and in a bill payable after sight, there are two distinct stages, firstly when it is presented for acceptance, and later when it is presented for payment. Section 61 deals with the former and section 64, with the later. Presentment for acceptance must always and in every case, precede presentment for payment. But when the bill is payable on demand, both the stages synchronise, and there is only one presentment, which is both for acceptance and for payment. When the bill is paid, it involves an acceptance; but when it is not paid, it is really dishonoured for non-acceptance. But whether the bill is payable after sight or at sight or on demand, acceptance by the drawee is necessary before he can be fixed with liability on it. It is acceptance that establishes privity on the instrument between the payee and the drawee. Mr. Mukherjee further pointed out that because of the Respondent Bank''s action, which was arbitrary, illegal, irregular, the Appellant has not only been refused but has also been deprived the use and enjoyment of its property.

16. It was next contended by Mr. Mukherjee that the letter of Shri A.K. Lal Gupta as mentioned hereinbefore would neither constitute an admission in this case nor the same would give rise to any estoppel. To establish such submissions, reference was made by him to the case of AIR 1936 Lahore 509, apart from relying on the case of Century Spinning and Manufacturing Company Ltd. and Another Vs. The Ulhasnagar Municipal Council and Another, , which has laid down that a representation of an existing fact must be distinguished from a representation that something will be done in future. The former may, if amounts to a representation as to some fact alleged at the time to be actually in existence, raise an estoppel, if another person alters his position relying upon that something will be due in future may involve an existing intention to act in future in the manner represented. If the representation is acted upon by another person it may, unless the statute governing the person making the representation provides otherwise, results in an agreement enforceable at law; if the statute requires that the agreement shall be in a certain form, no contract may result from the representation and acting therefor but the law is not powerless to raise in appropriate cases an equity against him to compel performance of the obligation arising out of his representation, apart from observing that Public bodies are as much bound as private individuals to carry out representations of facts and promises made by them, relying on which other persons have altered their position, to their prejudice. The obligation arising against an individual out of his representation amounting to a promise may be enforced contractually by a person who acts upon the promise; when the law requires that a contract enforceable at law against a public body shall be in certain form or be executed in the manner prescribed by statute, the obligation may be enforced

against it in appropriate cases in equity.

17. Mr. Harinarayan Mukherjee, appearing for the Respondents placed the defence of his client, the necessary particulars whereof have been indicated hereinbefore, and contended that this Court is not denuded of its powers to find out the real position and truth in this case on lifting the veil and according to him, to do due and substantial justice in a case like this, Court should lift the veil for the purposes as indicated above. In support of his submissions Mr. Mukherjee placed reliance on the case of Tata Engineering and Locomotive Co. Ltd. Vs. State of Bihar and Others, , where it has been observed that a Corporation in law is equal to a natural person and has a legal entity of his own. The entity of the Corporation is entirely separate from that of its shareholders; it bears its own name and has a seal of its own; its assets are separate and distinct from those of its members; it can sue and be sued exclusively for its own purpose; its creditors cannot obtain satisfaction from the assets of its members; the liability of the members or shareholders is limited to the capital invested by them; similarly, the creditors or the members have no right to the assets of the Corporation. However in the course of time, the doctrine that the Corporation or a Company has a legal and separate entity of its own has been subjected to certain exceptions by the application of the fiction that the veil of the Corporation can be lifted and its face examined in substance. The doctrine of the lifting of the veil thus marks a change in the attitude that law had originally adopted towards the concept of the separate entity or personality of the Corporation,. As a result of the impact of the complexity of economic factors, judicial decision have sometimes recognised exceptions to the rule about the juristic personality of the corporation. It may be that in course of time these exceptions may grow in number and to meet the requirements of different economic problems, the theory about the personality of the corporation may be confined more and more, and the doctrine of lifting of the veil postulates the existence of dualism be the corporation or company on the one hand and its members or share-holders on the other, apart from holding that categories of cases where the doctrine of lifting the veil has been applied indicated. It was further claimed by him that this Court should not interfere when there is want pleading on fraud. Mr. Mukherjee Further pleaded that the case of Punjab National Bank Ltd. v. Arura Mal Durga Das & Anr., (supra), will not apply or would not be applicable in this case, because of the observations to the effect that a Bank is entitled to appropriate the monies belonging to a firm constituted by a certain act of partners for payment of an overdraft of another firm constituted by the same set of partners. Because although two separate firms are involved they are not two separate legal entities and cannot be distinghished from the members who compose them. Mutual demands exist between the Bank on the one (sic)Kind and the persons constituting the firms on the other. Nor can it be said that these demand do not exist between the parties in the same right, as made by the Punjab High Court in the case of Firm Jaikishen Dass Jinda Ram & Ors. v. Central Bank of India etc., AIR 1950 Pun 1.

18. Apart from submitting that the other cases as cited by his adversary will not apply in this case, Mr. Hari Narayan Mukherjee also submitted that writ will not lie for enforcing a contract between a Bank and its depositor and in support of his submissions, he referred to the case of Kulchhinder Singh and Others Vs. Hardayal Singh Brar and Others, , where it has been observed that the remedy of Article 226 is unavailable to enforce a contract qua contract. A mere contract agreeing to quota of promotions cannot be exalted into a service rule or statutory duty. Private law may involve a State, a statutory body, or a public body in contractual or ''tortious actions. But they cannot be siphoned off into the writ jurisdiction. Although Article 226 is of wide amplitude to correct manifest injustice, but contractual obligations in the ordinary course, without even statutory complexion cannot be enforced by this short, though, wrong cut. Hence, a writ petition merely to enforce an agreement entered into between the employees and the co-operative Bank about giving certain percentage of promotions to existing employees is not maintainable.

19. Mr. Chandra Nath Mukherjee submitted that the determinations in Firm Jinda Ram & Ors. v. Central Bank of India etc. (supra) are distinguishable on facts and they would not apply in this cases as in that case parties were the same, whereas the same is not the case here in law. The determinations in Kulchiner Singh & Ors. v. Hardayal Singh Brar & Ors. (supra), has laid down certain exceptions, which would include amongst others manifest injustice, where interference can be made in a writ proceeding even though the parties are bound by a contract. This case comes within such exception, apart from the fact that the Respondent being at present a statutory body cannot be allowed to act arbitrarily and they are required to act fairly. In this case, we find the action of the Respondent Bank, not only to be arbitrary but the same is not fair too. As such, the above case as cited at the Bar would not help and assist the Respondent Bank. We also hold that withholding payment or dishonouring the cheque, when the Appellant had sufficient fund available, was not bonafide. Apart from the above, on consideration of the contents of the provisions in Paget''s Law of Banking, which was cited by Mr. Chandra Nath Mukherjee,. we find that the Respondent Bank had and still has a duty to pay and honour the cheque as it was their primary function and duty to honour the cheque of the Appellant as the state of the Account wanted such doing and there was or has been no reason or excuse to act in a contrary manner and further more when such withholding as in this case has seriously injured the Appellant and it may be required to face action is damages. There is also no doubt that the cheque as subsequently-drawn could not have created any misgiving in the mind of the Respondent Bank and they could realise what they were asked and required to do. There is also no doubt and as indicated earlier, that the Appellant had sufficient fund available to its credit, for the purposes as mentioned and there was no restraint order and as such also, the inaction of the Respondent Bank cannot be justified.

20. It should be noted that Mr. Hari Narayan Mukherjee, produced the plaint in T. S. No. 17 of 1986, which was filed on 17th March 1986 and also the upto date order-sheet of that case, wherefrom it appeared that the said Suit is still pending and the Appellant here, who is Defendant No. 1 in the Suit, has on 29th July 1986, obtained time to file his written statement.

21. On the basis of our findings as above and that too on consideration of the determinations as cited at the Bar, we find that the learned Trial Judge was not appropriately justified in dismissing the proceeding. We also keep this on record that nothing said in this judgment should be deemed to be determination, of any point as involved in the Suit and the points as involved, are kept open.

22. As such, we allow this appeal and set aside the judgment, as impeached and to allow the appellant to close its account, if so advised. The Respondent Bank is also directed to pay interest on and from 1st October, 1986 @ 12% p.a. when the Respondent Bank was requested by the Appellant to remit the credit balance to the Andhra Bank, Asansol. This order will not preclude the appellant from bringing any action to recover appropriate damages from the Respondent Bank, if so advised.

There will be no order as to costs.

Dilip Kumar Basu, J.

I agree.