

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment Reserved On: December 14, 2011
Judgment Delivered On: December 19, 2011

+ RFA(OS) 82/2007

CITI BANK N.A. Appellant
Through: Mr.V.P.Singh, Sr.Advocate with
Mr.Dalip Mehra, Advocate

versus

RAKESH KUMAR & ANR. Respondents
Through: Mr.Maninder Singh, Sr.Advocate with
Mr.Vishorv Mukherjee, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE S.P. GARG

PRADEEP NANDRAJOG, J.

1. Vide impugned order dated 31.05.2007, IA No.10216/1997 filed by the appellant seeking leave to defend has been dismissed and as a consequence, the suit filed by the respondents under Order XXXVII of the Code of Civil Procedure has been decreed. Needless to state, on the pleadings of the parties, the learned Single Judge has held that no triable issue arises.

2. Briefly stated, it was alleged in the plaint that Rakesh Kumar was carrying on business as the sole proprietor of M/s.Dairy Foods (India). Dairy Development Corporation (Nepal) had placed an order on his sole proprietary firm for supply of 415 metric tonnes of skimmed milk powder and in

respect of which, at the asking of Dairy Development Corporation (Nepal), Rashtriya Banijaya Bank, Nepal had opened a Letter of Credit on 14.01.1997, beneficiary whereof was the sole proprietary firm of Rakesh Kumar. The Letter of Credit was in sum of ₹2,63,11,000/-. He pleaded that as per the terms of the Letter of Credit the goods had to be shipped not later than March 23, 1997 and the bill had to be negotiated not later than March 31, 1997. He further alleged that as per conditions 13.A and 13.B of the Letter of Credit, 80% of the price had to be paid on presentation of the eight shipping documents listed under clause 13.A and the balance 20% payment had to be made upon successful delivery of the goods at the destination i.e. the warehouse of the Dairy Development Corporation (Nepal) at Kathmandu. He alleged that the Letter of Credit envisaged that the same was subject to UCP(ICC-500).

3. It was alleged in the plaint that on March 04, 1997 the Letter of Credit was amended by incorporating: *'In reimbursement the negotiating bank drawn on Citibank N.A.3 Parliament Street, P.O. No.020, New Delhi, India, which bank have been advised by telex message to honour such reimbursement, instead of upon presentation of documents.'* It was pleaded further that simultaneously the Rashtriya Banijaya Bank, Nepal issued an authorization to the appellant directing it to honour all reimbursements drafts drawn within the credit amount of the Letter of Credit i.e. ₹2,63,11,000/-. It was pleaded that the aforesaid authorization was issued on March 06, 1997 and was forwarded by the appellant to him under cover of its letter dated March 12, 1997.

4. In this way, it was pleaded that the appellant became the reimbursing bank pertaining to the Letter of Credit and thus became obliged to honour the Letter of Credit.

5. Pleading that all pre-shipment formalities were complied with and necessary documents obtained as were envisaged by Clause-13.A of the Letter of Credit and the goods were dispatched on March 23, 1997, it was pleaded that the Bill of Exchange was drawn on March 25, 1997 and presented to the appellant on March 26, 1997. The appellant honoured the same and released 80% of the Letter of Credit amount. The goods were received at the destination on April 04, 1997 and thus the remaining amount i.e. 20% of the Letter of Credit became payable. The lorry receipts had already been submitted and thus the sum of ₹52,62,200/- ought to have been released being the balance 20% of the Letter of Credit. The appellant, it was alleged, vide communication dated June 20, 1997, raised a frivolous dispute pertaining to proof of successful delivery of the goods. It was pleaded that in spite of UCP (ICC-500) clearly stating vide Article 13.B that the issuing bank, the confirming bank if any, or a nominated bank acting on their behalf should raise all objections within reasonable time and in any case not beyond seven days, it was highlighted that the communication dated June 20, 1997 was highly belated. It was further pleaded that as per Article 13.C of UCP (ICC-500) it was clearly mandated that: *'If a credit contains conditions without stating the document(s) to be presented in compliance therewith, the banks will deal such conditions as not stated and will disregard them.'* Highlighting that the condition in the Letter of Credit that: *'Balance of 20 percent payment will be made after all the consignments of*

skimmed milk powder are successfully delivered at destination i.e. DDC's Warehouse, Balaju, Kathmandu at site,' in respect of what would constitute successful delivery in terms of the documents required, not being stipulated, it was pleaded that in terms of Article 13.C of UCP (ICC-500) the said condition had to be ignored. It was pleaded that the appellant realized the hollowness of its claim as per the letter dated June 20, 1997 that it could not stand legal scrutiny and thus it changed its version conveyed under cover of appellant's letter dated July 11, 1997 informing that the appellant could not pay without receiving authorization from Rashtriya Banijya Bank, Nepal.

6. Suit was accordingly filed in terms of the Letter of Credit with the admitted status of the appellant being that of the reimbursing bank.

7. Seeking leave to defend, the appellant admitted its status being that of the reimbursing bank and pleaded that till it received an authorization from Rashtriya Banijya Bank Nepal it could not release the payment. It was alternatively pleaded that the Letter of Credit had to be negotiated prior to March 31, 1997 and that thereafter the Letter of Credit stood automatically discharged. It was pleaded that the beneficiary did not negotiate the second payment claimed by submitting the relevant documents prior to March 31, 1997.

8. It is thus apparent that the issue simply related to interpretation of the terms of the amended Letter of Credit and the obligation of the appellant in its jural capacity of being the reimbursing bank.

9. The learned Single Judge has noted the aforesaid facts and has highlighted that the plaintiff drew the Bill of Exchange on 25.03.1997 and requested its banker, State Bank

of Bikaner & Jaipur to present the Bill of Exchange to the appellant so that payment could be realized and that the said bank presented the Bill of Exchange to the appellant on 26.03.1997 when 80% of the credit payment was released for the reason all documents contemplated by Clause 13.A of the Letter of Credit were enclosed and were found to be in order.

10. The learned Single Judge has thereafter noted the shifting stand taken by the appellant, which was highlighted in the pleadings in the plaint and as noted herein above.

11. The learned Single Judge has thereafter considered, whether the appellant required fresh authorization from Rashtriya Baniya Bank, Nepal to make the payment; whether the Bill of Exchange was presented beyond March 31, 1997 (and in respect whereof it has been noted that the Bill of Exchange was only presented once when the Letter of Credit was negotiated by presenting the Bill of Exchange on March 25, 1997); and what was the effect of UCP (ICC-500).

12. The three have been answered in paragraphs 11 to 14 of the impugned decision, which read as under:-

“11. It is clear from the aforesaid rival contentions that the basic dispute is as to whether there was authorization given to the defendant bank to make payment of balance 20% amount after the delivery of goods contained in LC dated 14.1.1996, as amended. The relevant clauses of the LC dated 14.1.1997 have already been reproduced above. Clause 11 stipulates that shipment was to be effected by 23.3.1997. As per clause 12, the bill of exchange was to be negotiated by 31.3.1997 and not thereafter. Clause 13 provided for the manner in which payment was to be made to the suppliers, namely, the plaintiffs. 80% payment was to be made on presentation of documents stipulated in sub-clause (A) of Clause 13. In the telex dated 4.3.1997, amendment was made to the effect that the reimbursement was to

be honoured on the advice of the negotiating bank (SBBJ in this case) instead of upon presentation of documents and mail confirmation was also not required. In any case, this 80% payment was made by the defendant bank and, therefore, we are not concerned with this aspect. About balance 20% payment sub-clause (B) of Clause 13 stipulated as under:-

“(B) Balance of 20% payment will be made after all the consignment of skimmed milk powder are successfully delivered at destination, i.e., DDC’s warehouse, Balaju, Kathmandu at site through Letter of Credit.

Note: The beneficiary will have to submit the quantity and quality inspection certificate of the goods (sic) at the time of shipment issued by Government or Government authorized institution.”

12. This provision in the LC provides that balance 20% payment was to be made on the successful delivery of the consignment at DDC’s warehouse, Balaju, Kathmandu at site. In order to prove that it was successfully delivered, note appended to Clause 13 provides that the plaintiffs were to submit the quantity and quality inspection certificate of the goods at the time of shipment issued by the Government or the Government authorized institution. As per sub-clause (B) of Clause 13, a clear authorization was given to the defendant bank to release balance payment of 20%. It was only to satisfy that consignment was successfully delivered and there was quantity and quality inspection of the goods in the form of certificates from the Government of India. Documents in support of delivery of the goods as well as quantity and quality inspection certificate issued by the Ministry of Food Processing Industries, Government of India, were duly submitted and there is no dispute about the same. The case of the defendant bank is that fresh authorization was needed as the date of 31.3.1997 had expired. A joint reading of Clause 11 to 13 of the LC dated

14.1.1997 would show that the obligation of the plaintiffs was to effect the shipment before 23.3.1997 and negotiate bill of exchange before 31.3.1997. It is not in dispute that shipment was effected before 23.3.1997. Bill of exchange was also negotiated before 31.3.1997 because of which 80% payment was released to the defendant. Clause 12 which mentions about negotiation of bill of exchange not later than 31.3.1997 would not include the date on which balance payment is to be received for which the document required was the proof of successful delivery of the goods at destination and not negotiation of bill of exchange. Learned counsel for the plaintiff is, therefore, right in his submission that Clause 13 only provided that payment was to be made at two stages, namely, 80% before 31.3.1997 on presentation of documents and remaining 20% after the consignment was delivered. No fresh authorization was, therefore, needed by the defendant bank.

13. We may note that the LC stipulates that the same is subject to UCP-ICC 500. Therefore, articles of this UCP 500 would govern the transaction in question. Article 3(A) thereof very specifically provides that Letter of Credits, by their nature, are separate transaction from the sales or other contracts on which they may be based and the banks are, in no way, concerned or bound by such contracts even if any reference whatsoever to such contracts is included in the credit. Article 4 provides that in credit operations, all parties concerned deal with documents and not with goods, services and/or other purpose to which the documents may relate. Import of Article 13, namely, 'objections, if any, are to be stated within seven days', has already been taken note of above. Article 14, inter alia, provides that when the issuing bank authorizes another bank to pay the amount, the bank is bound to reimburse the nominated bank. The plea of the defendant bank now that fresh authorization was needed is clearly untenable in view of the aforesaid provisions in the LC and the terms vide which the LC was governed. In the letter dated 20.6.1997 written by the defendant

bank to SBBJ no such issues of authorization was raised. Two objections were raised, namely, (i) the LC expired on 31.3.1997 and claim for 20% was received only on 6.6.1997 and (ii) proof of delivery of goods at destination was not submitted as requested by the LC opening bank. These two objections were taken in the following form in the said letter:-

“Firstly, LC expired on March 31, 1997 and your claim for 20% amount was received only on June 06, 1997. Secondly, as per LC terms the balance 20% payment will be made “After all the consignment of skimmed milk powder are successfully delivered at destination, i.e. DDC’s Ware House, Balaju, Kathmandu at side (*sic*). Since you have not submitted this proof we requested the LC opening bank thru our Nepal office that there is an agreement between applicant and beneficiary for the balance 20% payment which as per this agreement will be released only after acceptance by applicant upon verification of merchandise hence applicant is to certify successful delivery at applicant’s warehouse Balaju.”

14. The LC was, therefore, returned by raising the aforesaid two objections. However, both these objections are found to be unsustainable in view of above discussion. As already pointed out above, before 31.3.1997 only bill of exchange was to be negotiated, which was done. By very nature of the transaction when payment of 20% balance amount was to be made after delivery of the goods at destination, it could not be imagined that such event would also take place before 31.3.1997. This date *dad (sic)* to be after 31.3.1997 and therefore, it could not be said that the LC had expired. Such objection could have been valid only if bill of exchange was not negotiated at all before 31.3.1997. Once the LC was negotiated before 31.5.1997(?), the effect was that 20% payment was deferred on happening of a particular contingency which the bank was liable to pay at that stage. Further, as noted above, as per UCP 500, bank was governed by the LC only, namely,

the documents and not concerned with the goods or alleged quality etc. thereof. This is the legal position as well as can be noticed from the judgment of the Supreme Court in the case of ITC Ltd. vs. Debt Recovery Appellate Tribunal & Ors. (1998) 2 SCC 70."

13. We highlight that at the hearing of the appeal, the same very points which we have noted herein above and which were raised by way of defence seeking leave to defend, and as have been discussed by the learned Single Judge, were argued before us.

14. We agree with the reasoning and the conclusions arrived at the by the learned Single Judge and in our opinion, so crisply and finely have the same been dealt with by the learned Single Judge, that we feel it to be a useless exercise to re-pen the same reasoning in different words for the reason, except for one small reasoning, we would be unable to make any further contribution to the reasoning of the learned Single Judge. But, lest we be accused of being copycats and not evidencing that we have also applied our mind to the issues raised, and to prove that we have applied ourselves, we record that the learned Single Judge has correctly read Clause 11 and 13 of the Letter of Credit dated 14.01.1997 that the obligation was to effect shipment before 23.03.1997 and negotiate the Bill of Exchange before 31.03.1997 and that the Bill of Exchange had to be negotiated only once. The learned Single Judge has correctly opined that the Letter of Credit required firstly 80% payment to be released upon presentation of documents listed as per Clause 13.A and that the remaining 20% payment had to be released upon proof of delivery of the consignment, without any further negotiation of the Bill of Exchange. The learned Single Judge has correctly discussed

the effect of the appellant's letter dated June 20, 1997. The learned Single Judge has correctly opined that since the Letter of Credit clearly stipulated that it was subject to UCP (ICC-500) Article 14 thereof clearly bound the reimbursing bank i.e. the appellant and that as per Article 13, all objections had to be raised within seven days. Learned Single Judge has correctly held that the final stand taken pertaining to authorization from the Rashtriya Banijya Bank Nepal could not have been raised after seven days. The learned Single Judge has correctly opined that no triable issue arises. The purpose of a summary suit requiring leave to defend to be obtained by showing a defence raising triable issues is obviously to ensure that a litigation which is meaningless and bound to prove abortive should not be permitted to occupy the time of the Court.

15. The reasoning of the learned Single Judge is incorporated by us as our reasoning and the small additional reasoning which we add is that, being the reimbursing bank, the liability of the appellant has to be at par with that of Rashtriya Banijya Bank Nepal. This is apparent from Article 3 of UCP (ICC-500).

16. Before we conclude, we would wish to pen a word on the manner in which the appellant has conducted itself in the proceedings in appeal.

17. The appellant claims to be a bank having international presence. We presume that the appellant has a proper and a well-equipped legal department to render advice on legal matters.

18. The instant appeal was filed belatedly with a delay of 45 days and vide CM No.16108/2007, said delay in filing the appeal was sought to be condoned on the ground that the

concerned officer of the bank was on training leave and was thus unable to sign the necessary papers. The appellant ought to have made arrangement for its works to be carried out if some officer proceeds on training leave.

19. When the respondents filed the reply pointing out the loose and laconic pleadings in the application, the appellant filed another application CM No.1287/2008 in which it once again prayed for delay in filing the appeal to be condoned and this time took an entirely different ground to have the delay condoned. It was stated that the appellant was given to understand that the period of limitation prescribed to challenge the impugned decision was 90 days and not 30 days. When the respondents filed reply to CM No.1287/2008 and highlighted that the appellant was taking a complete somersault, while praying that delay be condoned, the appellant took yet another somersault in the rejoinder filed by pleading that vide CM No.16108/2007 it was seeking delay in re-filing to be condoned and not the delay in filing; a fact which is totally incorrect for the reason vide CM No.16108/2007 delay in filing the appeal of 45 days is prayed to be condoned for.

20. It is most unfortunate that a bank which claims to be a premier bank files applications containing false pleadings. We depreciate the conduct and rather than burden the system by initiating perjury proceedings, we would prefer to impose heavy costs against the appellant.

21. The appeal is dismissed with costs assessed at ₹1,00,000/- (Rupees One Lakh only). Half cost i.e. ₹50,000/- (Rupees Fifty Thousand only) is directed to be paid to the respondents and the remaining half costs shall be deposited

by the appellant with the Delhi High Court Legal Services Committee within 30 days from today.

22. As a condition to stay the operation of the impugned decree, appellant was required to deposit the decretal amount in this Court which was permitted to be withdrawn by the respondents upon furnishing security to the satisfaction of the Registrar of this Court. The respondents have withdrawn the decretal amount after furnishing a bank guarantee issued by the Standard Chartered Bank. Since the appeal has been dismissed, the security i.e. the bank guarantee furnished by the respondents is discharged. The Registry is directed to return the bank guarantee to the counsel for the respondents who is authorized to receive the same.

23. Copy of this order be sent to the Delhi High Court Legal Services Committee for information.

(PRADEEP NANDRAJOG)
JUDGE

(S.P.GARG)
JUDGE

DECEMBER 19, 2011
dk