

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **RFA No.168/2007**

% **14th May, 2012**

STATE BANK OF INDIA Appellant
Through: Mr. S.L. Gupta, Advocate.

versus

M/S. POLYPLEX CORPORATION LTD. & ANR. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. The challenge by means of this Regular First Appeal filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 14.9.2006 decreeing the suit of the respondent No.1/plaintiff against the appellant-bank by dismissing the application for leave to defend. The suit was filed under Order 37 CPC for the recovery of an amount of ₹ 5,54,819/- due to dishonour of an Irrevocable Letter of Credit issued by the appellant/defendant No.1.

2. The facts of the case are that the respondent No.1/plaintiff sold goods to the defendant No.2 under four invoices totaling to ₹ 4,46,153/-. The defendant No.2 accepted a Bill of Exchange drawn in favour of respondent No.1/plaintiff and to ensure payments, it got issued an
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Irrevocable Letter of Credit (LC) from the appellant/defendant No.1 to the respondent No.1/plaintiff. The appellant-bank refused to pay under the LC by pointing out certain discrepancies to the respondent No.1/plaintiff by its letter dated 26.3.1995 and to which, the defendant No.2 on whose behalf the letter of credit was issued waived the discrepancies by its letter dated 5.4.1995. The letter dated 5.4.1995 was personally delivered to the bank on 19.4.1995. When the appellant-bank once again vide their letter dated 20.4.1995 referred to their letter dated 26.3.1995, a legal notice dated 8.10.1995 came to be issued to the appellant-bank to make the payment of the amount inasmuch as the letter dated 20.4.1995 was issued by avoiding to refer to the letter dated 5.4.1995.

3. The basic defence of the appellant-bank in the leave to defend application was that the documents which were negotiated under the Letter of Credit were not strictly in accordance with the terms and conditions of the Letter of Credit and there were as many as six discrepancies. The appellant-bank denied that the discrepancies were accepted by the defendant No.2 vide their letter dated 5.4.1995. It was also for the first time stated in the leave to defend application that signatures of one of the authorized signatories on the letter dated 5.4.1995 of the defendant No.2 were not tallying with the specimen signatures. Trial Court has dismissed

the leave to defend application by making the following observations:-

“8. I have given my careful consideration to the arguments advanced before me. I have also gone through the case file carefully. The application under consideration is supported with an affidavit of Shri Lalit Sharma, Chief Manager (SIB), State Bank of India, South Extension, Part-I Branch, New Delhi. The application for leave to defend has not been signed by any authorized person as neither any authorization has been annexed nor there is any averment that the person signing the application for leave to defend has been authorized. Shri Lalit Sharma has applied for leave to defend the suit for defendant no.1. He has not disclosed under what authority he has applied for leave to defend the suit. The plaintiff in its reply has categorically taken an objection that the application for leave to defend is not supported with an affidavit of a person who is duly constituted or authorized. Even thereafter defendant no.1 did not care to remove the defect and authority to apply for leave to defend the suit was neither disclosed nor produced. In the circumstances, Shri Lalit Sharma who has applied for leave to defend has no authority to do so and since defendant no.1 has not applied for leave to defend the suit through a duly authorized person, the application made by Shri Lalit Sharma cannot be considered. Its result would be that there is no application for leave to defend on behalf of the defendant no.1. For taking this view, I am supported with the judgment of our own High Court reported as Vipin Gupta (supra).

9. Even assuming for the sake of arguments that the defendant no.1 has applied for leave to defend the suit through an authorized person, the application does not disclose any triable issue for which leave to defend the suit has to be granted. Defendant no.1 bank vide their letter dated 26.03.1995 pointed out certain deficiencies and assured the defendant no.2 to accept deficiencies to enable them to make payments to the plaintiff company. The defendant no.2 company vide its letter dated 05.04.1995 had accepted those deficiencies and called upon the defendant no.1 bank to pay the amount under the Letter of Credit to the plaintiff. The said letter was delivered to the defendant bank on 19.04.1995. The defendant no.1 bank again vide their

letter dated 20.04.1995 referred to their letter dated 26.03.1995 but ignored the letter of the defendant no.2 which is dated 05.04.1995 and which was delivered to the defendant no.1 bank on 19.04.1995. The defendant no.1 bank has come out with a plea that the signatures of the authorized signatory of the defendant no.2 did not match the specimen signatures. This plea was never raised when the documents were executed or even thereafter. Moreover, this plea of “mis-match” of signatures was never informed by the defendant no.1 to the plaintiff. Thus, the plea raised by the defendant no.1 appears to be purely an after thought just to deny their liability under the Letter of Credit issued by the defendant no.1 bank. Assuming for the sake of arguments that there had been any difference in signatures, the plaintiff would have immediately obtained re-confirmation of the signatures from the officers of the defendant no.2 to whom the goods had been supplied and on whose behalf the Letter of Credit was obtained by the defendant no.1 bank.

10. In case of irrevocable Letter of Credit, it is the settled law that the Letter of Credit should not be interfered with unless there is fraud and irretrievable injustice involved in the case and fraud has to be an established fraud. There should be prima facie case of fraud and special equities in the form of preventing irretrievable injustice between the parties. Mere irretrievable injustice without prima facie case of established fraud is of no consequence in restraining the encashment of bank guarantee. Only in the event of fraud or irretrievable injustice the court would be entitled to interfere in a transaction involving a bank guarantee and under no other circumstances. Commitments of banks must be honoured free from interference by the courts. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with. Otherwise the very purpose of letter of credit would be negative and the fabric of trading operation will get jeopardized. Upon Letter of Credit resolves many of the internal trade and transactions in a country. In case the Letters of Credit are lightly interfered with by the courts, the trust in commerce-internal and international-would be irreparably damaged. It is only in exceptional cases the court should interfere. If the documentary credits are irrevocable and independent, the bank must pay when

demand is made. For taking this view, I am supported with the judgments New India Assurance (supra), ONGC (supra) and Super House (supra).

11. Under the circumstances and for the above said reasons, I am of the opinion that if the banks are allowed to dishonour their commitments under Letter of Credit, the entire trade and commerce will collapse and people will lose faith on Banks. The defendant no.1 has failed to raise any triable issue in this case. Thus, the application seeking leave to defend the suit filed on behalf of defendant no.1 is dismissed. The suit of the plaintiff is decreed against the defendants for a sum of ₹ 5,54,819/- along with costs and interest at the rate of 8% per annum from the date of filing of the suit till its realization. Decree sheet be drawn accordingly. File be consigned to Record Room.” (underlining added)

4. A reference to the aforesaid conclusions of the trial Court shows that though the trial Court held that leave to defend was not filed by an authorized person, however, the trial Court has given further finding with regard to the fact that there are no triable issues inasmuch as the defendant No.2 company had accepted the deficiencies and called upon the appellant-bank to pay the amount under the Letter of Credit which was not done. So far as the issue of signatures of the authorized signatory of the defendant No.2 not matching with the specimen signatures, the trial Court notes that this plea was never raised at any time before the suit was filed and never was this issue ever informed to the respondent No.1/plaintiff by the appellant. Trial Court therefore notes that this defence is only an afterthought and moonshine. I may state that the basic reason for the

appellant-bank refusing to pay under the Letter of Credit seems to be that it did not secure itself adequately at the time of issuing of Letter of Credit in favour of the respondent No.1/plaintiff at the request of the defendant No.2/respondent No.2, and now once the Letter of Credit has been invoked unacceptable defences are being taken. Trial Court rightly notes that if banks are allowed to dishonour their commitments under Letter of Credit, the entire trade and commerce will collapse and people will lose faith on Banks. Bank guarantees and Letter of Credit are the backbone of financial and commercial transactions, and in my opinion, the trial Court has rightly held that there arises no triable issues. After all what is the wrong of the respondent No.1/plaintiff who has parted with goods on the strength of the LC so as not to receive payment. If the appellant-bank failed to secure itself before issuing the LC why should a seller who has sold goods suffer.

5. Reliance placed upon on behalf of the appellant on the judgment of the Supreme Court in the case of ***United Commercial Bank Vs. Bank of India and Ors. AIR 1981 SC 1426*** is misconceived inasmuch as in the facts of the present case the discrepancies were in fact waived by the defendant No.2/respondent No.2, and it was not an issue in the case of ***United Commercial Bank (supra)***.

6. In view of the above, there is no merit in the appeal, which is accordingly dismissed, leaving the parties to bear their own costs. Trial Court record be sent back.

VALMIKI J. MEHTA, J

MAY 14, 2012
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