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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL (L) No. 136 OF 2015
IN
LEAVE PETITION No. 24 OF 2015
IN
SUIT (L) No. 109 OF 2015

Essel Vidyut Vitran (Ujjain) Pvt. Ltd. ... Appellants
Vs.
Madhyapradesh Paschim Kshetra
Vidyut Vitaran Co. Ltd. & Ors. ... Respondents

Mr. Ashish Kamat a/w S. K. Srivastav, Ms. Manorama Mohanty, A. P. Singh i/b S. K. Srivastav & Co., for the Appellants.

CORAM : V. M. KANADE, &
REVATI MOHITE DERE, JJ.

DATE : FEBRUARY 2, 2015

PC.

1. This appeal is filed, challenging the order passed by the learned Single Judge, refusing to grant leave under Clause XII. Copy of the order is not available. It is submitted that learned Single Judge has refused to grant leave, relying on Clause 17.1.2 of the Distribution Franchise Agreement dated 10th May, 2015. It is submitted that the suit has been filed by the Appellants herein, seeking an injunction restraining the Bank from realizing the letter of credit. It is submitted that it is settled position in law that letter of credit is an independent agreement between the parties and has nothing to do with the Franchise Agreement. It is submitted that letter of credit has been

executed at Bombay and this Court would have jurisdiction and the learned Single Judge, therefore, erred in not granting leave under Clause XII.

2. In our view, since there is much substance in the submissions made by the learned counsel appearing on behalf of the Appellants that the leave under Clause XII is granted *ex parte*, it is not necessary to issue notice to the Respondents. The Apex Court in the case of – *Hindustan Steel Works Construction Ltd. Vs. Tarapore & Co. & Anr.* [(1996) 5 Supreme Court Cases 34] in paragraph 8 has clearly observed that with respect to an irrevocable letter of credit, contract between the banker and the beneficiary is an independent and unqualified by the contract of sale or other underlying transaction. Paragraph 8 of the said judgment reads as under:

“8. With respect to an irrevocable letter of credit this Court in the case of *Tarapore & Co. v. Tarapore and Co. v. Tractors Export, Moscow*, 1969 (2) SCR 920 pointed out that such a contract between the banker and the beneficiary is independent of and unqualified by the contract of sale or other underlying transaction and quoted with approval the following observations made by Jenkins L.J. in *Hamzeh Malas and Sons v. British Imex Industries Ltd.* :

“We have been referred to a number of authorities,

and it seems to be plain enough that the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation to pay, irrespective of any dispute there may be between the parties as to whether the goods are up to contract or not. An elaborate commercial system has been built up on the footing that bankers' confirmed credits are of that character, and in my judgment, it would be wrong for this Court in the present case to interfere with that established practice.”

3. The learned Single Judge, therefore, has erred in not granting leave under Clause XII. The impugned order dated 2nd February, 2015 passed by the learned Single Judge is set aside. Leave under Clause XII is accordingly granted. It is always open for the Respondents to apply for revocation of the order of grant of leave under Clause XII. If such an application is made, the same may be considered independently, on merits and in accordance with law, without being uninfluenced by the observations made by this Court. Appeal is accordingly allowed.

. Parties to act on an authenticated copy of this order.

[REVATI MOHITE DERE, J.]

[V. M. KANADE, J.]