

Original Application No.101 of 2015
and
Application No.954 of 2015
in
Civil Suit No.71 of 2015

R.SUBBIAH, J.

The Original Application has been filed by the applicant/plaintiff under Order XIV Rule 8 of the Original Side Rules read with Order 39 Rules 1 & 2 of CPC, praying to grant an order of interim injunction restraining the 1st respondent/1st defendant/Bank from releasing the payments in favour of the respondents 2 & 3/Defendants 2 & 3 by encashments of Letter of Credits, bearing following numbers_

No.04801414IMOOOO431, dated 05.11.2014;
No.0480414IMOOOO435, dated 07.11.2014,
No.0480414IMOOOO441, dated 11.11.2014;
No.0480414IMOOOO451, dated 18.11.2014;
No.0480414IMOOOO458, dated 24.11.2014;
No.0480414IMOOOO456, dated 22.11.2014;
No.0480414IMOOOO457, dated 22.11.2014;
No.0480414IMOOOO459, dated 24.11.2014;
No.0480414IMOOOO462, dated 25.11.2014;
No.0480414IMOOOO465, dated 25.11.2014,
No.0480414IMOOOO467 dated 26.11.2014;
No.0480414IMOOOO468, dated 28.11.2014;
No.0480414IMOOOO469, dated 28.11.2014;
No.0480414IMOOOO474 dated 03.12.2014;
No.0480414IMOOOO476, dated 04.12.2014;
No.0480414IMOOOO476, dated 04.12.2014;
No.0480414IMOOOO479 dated 04.12.2014,

No.0480414IMOOOO478 dated 05.12.2014;
No.0480414IMOOOO480 dated 05.12.2014;
No.0480414IMOOOO482 dated 05.12.2014;
No.0480414IMOOOO484 dated 06.12.2014;
No.0480414IMOOOO486 dated 08.12.2014;
No.0480414IMOOOO498 dated 10.12.2014;
No.0480414IMOOOO516 dated 22.12.2014;

which were opened by the 1st respondent/Bank at the instance of the applicant in favour of the respondents 2 & 3, pending disposal of the suit.

2.The applicant herein is the plaintiff and the respondents herein are the defendants in the suit. For the sake of convenience, the parties will be referred to as per their rankings in the suit.

3.The plaintiff has filed the suit praying to grant perpetual injunction restraining the 1st defendant/Bank from releasing the payments in favour of the defendants 2 & 3 by encashment of the Letter of Credits (mentioned above), opened by the 1st defendant/Bank at the instance of the plaintiff in favour of the defendants 2 & 3.

4.The case of the plaintiff, in brief, is as follows_

4(1)The plaintiff-company is a hundred percent Export Oriented Undertaking/Unit, incorporated under the Companies Act, 1956, in the year 2004 and engaged in the business of export of bath and kitchen vanity products. The plaintiff has also a manufacturing plant in Maraimalai Nagar,

Kancheepuram District. The raw materials required for manufacture are acquired through various vendors, most of them are based in China. For the purpose of smooth acquisition of materials and to streamline the same, the plaintiff had acquired the services of the defendants 2 & 3. The defendants 2 & 3 are responsible for co-ordinating with the various vendors and for procuring the raw materials as required by the plaintiff for their manufacturing. Raw materials from various vendors were procured based on the instructions/requirements of the plaintiff-company and the same was consolidated and shipped to the plaintiff by the defendants 2 & 3. In fact, for the purpose of smoothing operation, the plaintiff-company had established a branch of their company in China to liaison with the defendants 2 & 3. The 4th defendant was appointed as the General Manager of the Branch Office of the plaintiff in China and he was incharge of all its activities.

4(2) Payments to the defendants 2 & 3 were made in the form of Letter of Credit (in short 'LC') being taken through the 1st defendant/Bank in favour of the defendants 2 & 3. The plaintiff is required to execute/open the LC 10 days prior to shipping of the consignment and the plaintiff has duly complied with their part without any default. The LC will be released in favour of the defendants 2 & 3 as and when the LC conditions complying documents are received by the 1st defendant/Bank. These documents have to be sent by the defendants 2 & 3, through their bank to the plaintiff's bank i.e., the 1st defendant/Bank. Normally, the 1st defendant/Bank is required to verify as to whether all the credit documents required for release of LC have

been sent by the defendants 2 & 3 and in case of any deficiency, the 1st defendant/Bank, under the terms of the LC, can levy a charge of USD 50 upon the defendants 2 & 3 for the discrepant documents.

4(3)While so, the plaintiff started receiving complaints from various buyers and vendors over discrepancy in payment and quality of goods that were being distributed. Despite the plaintiff executing LC in order to disburse timely payments to the vendors, the plaintiff was shocked to receive such complaints of delay in payment or nonpayment of dues. That apart, the plaintiff was also in receipt of raw materials that were not in confirmation with the quality requirements of the plaintiff. Upon enquiry, the plaintiff was shocked to know that the defendants 2 & 3 had colluded with the 4th defendant in order to abstain from properly paying the vendors who had supplied raw materials to the plaintiff and to perpetuate several other illegalities against the plaintiff-company. The payments sent in the form of LC were misappropriated by the defendants 2 & 3, with the aid of the 4th defendant and the plaintiff was kept in dark over the same for a considerable period of time. The defendants 2 & 3, along with the 4th defendant, had fraudulently increased / over invoiced the value of the goods/materials being shipped, thereby mislead the plaintiff to open LC of increased value, for goods which were comparatively lesser; thus, they unjustly enriched themselves. Based on the false claim and figures issued by the defendants 2 & 3, in collusion with the 4th defendant, the plaintiff had opened LCs, which can be deemed to be tainted with fraud, right from their

inception/creation. The amount, for which the LCs were opened, was false and exaggerated claims that have caused grave financial loss to the plaintiff. Thereafter, the plaintiff has terminated the services of the 4th defendant. The defendants 2 & 3 have refused to reimburse the plaintiff for the losses incurred by them, due to which the plaintiff may be required to pay their vendors again as payment originally sent to them was not properly disbursed by the defendants 2 & 3.

4(4)The 1st defendant/Bank was also required to ensure that the relevant documents, that comply with the conditions of the LC, are sent by the defendants 2 & 3 before the release of payments. A detailed enquiry and scrutiny by the plaintiff has brought to light that there are several discrepancies with regard to the documents sent by the defendants 2 & 3 under the conditions of the LC for release of payment. In fact, certain documents sent by the defendants 2 & 3 for compliance of release of LC were themselves fraudulent and fake. For instance, the LC requires the defendants 2 & 3 to send copies of non-negotiable documents within 15 days from shipment. No such documents have been given by the defendants 2 & 3. The defendants 2 & 3, under the LC terms, are supposed to send the shipment details for insurance purpose, within 48 hours vide Fax. No such documents were sent and the Fax receipt was also not authentic and it is concocted. Despite the presence of several such discrepancies, without proper application of mind and investigation, the 1st defendant/Bank had released the LC in favour of the defendants 2 & 3, who have been acting in a

fraudulent manner causing irretrievable loss to the plaintiff.

4(5) Thereafter, upon realization of the fraud committed by the defendants 2 & 3, to prevent unjust encashment of the outstanding LC, the plaintiff had orally informed the 1st defendant/Bank regarding the fraud played by the defendants 2 & 3 and also given representations showing the various discrepancies in the documents submitted by the defendants 2 & 3 for the purpose of release of LC. Despite bringing to the knowledge of the 1st defendant/Bank about the discrepancies and the fraud committed by the defendants 2 & 3, the 1st defendant/Bank is in the process of releasing the LCs in favour of the defendants 2 & 3 mechanically in an effort to fulfill their obligation. The mechanical action on the part of the 1st defendant/Bank in releasing the LC will cause irretrievable loss and damage to the plaintiff. Hence, the plaintiff has filed by the present suit for injunction.

5. Pending the suit, the plaintiff filed the above Original Application for interim injunction as stated supra.

6. This Court, by order dated 29.01.2015 in O.A.No.101 of 2015, has granted interim injunction as prayed for, for a period of four weeks.

7. On appearance, the 1st defendant/Bank has filed an Application No.954 of 2015 seeking to vacate the interim injunction order dated 29.01.2015 passed in O.A.No.101 of 2015. The sum and substance of the

contentions raised by the 1st defendant/Bank in the affidavit filed in support of vacate interim order application are as follows__

(a)The suit has been filed by the plaintiff seeking permanent injunction restraining the 1st defendant from releasing payments in favour of the defendants 2 & 3, by encashment of 23 letters of credit opened by the Bank at the instance of the plaintiff in favour of the defendants 2 & 3. According to the 1st defendant/Bank, each Letter of Credit is an independent transaction and in the present case, 23 Letters of Credits were opened on behalf of the plaintiff for its different merchanting trade transactions with the defendants 2 & 3, who are carrying on business in China and the plaintiff has clubbed all the 23 letters of credit in one suit and sought permanent injunction. Further, payment of LC amount for each transaction by the Bank is a separate cause of action and different cause of action have been joined/clubbed by filing single suit and such a suit would be bad for multifariousness. As per the Bill of Lading, in the event of dispute with the defendants 2 & 3, the plaintiff can only initiate legal action before the Courts in Hong Kong Special Administrative Region.

(b)So far as the merit of the case is concerned, it is contended by the 1st defendant/Bank that the plaintiff has been enjoying various credit facilities from the 1st defendant/Bank since 14.08.2003 and presently enjoying a Fund Based Working Capital (FBWC) and a non Fund Based Limits aggregating to Rs.66.02 crores for its export business. To meet its export obligations, the plaintiff has been requesting the 1st defendant/Bank to open the Letters of Credit ever since sanctioning of the credit facilities. Earlier,

when the Bank opened LCs, after scrutiny of the documents by the Bank, the plaintiff used to collect the original documents by issuing letter of acceptance of documents for payments and after such acceptance of documents, the Bill of Exchange drawn under the LCs had been honoured by the Bank. At no point of time, it was alleged that the Bank has failed to verify the documents and/or failed to seek waiver for discrepancy in the import documents. So far as the present case is concerned, on receipt of the original documents from the bankers of the seller of the goods in respect of 23 LCs, the same were scrutinized by the Bank. Thereafter, the said documents were once again given to the plaintiff for scrutinizing the same and they had accepted the documents for payment on the respective due dates of each letter of credit. Having accepted the documents for payment, the plaintiff is estopped from alleging knowledge of fraud against the 1st defendant/Bank. The 1st defendant/Bank has no knowledge whatsoever about the alleged fraud committed by the other defendants. If the plaintiff has any grievances with regard to the sale transaction, it is for the plaintiff to take appropriate legal proceedings against them before the appropriate forum. In fact, the 1st defendant/Bank has not received any representation whatsoever alleging fraud from the plaintiff. Further, the 1st defendant/Bank had received the import documents accepting the same for payment very much before alleged representation. In the case of first LC referred in the plaint, the documents were received on 17.11.2014. Now, the plaintiff has stated that they have given representation about the discrepancies on 21.01.2015, ie., after a gap of two months. The entire suit is only an afterthought in order to prevent

the Bank from honouring its legal obligation. As per Article 27 of the Uniform Customs and Practice for Documentary Credits (UCP) 600, the Bank had only received transport documents in terms of the LCs already opened at the instance of the plaintiff and those documents were already delivered to the plaintiff. The plaintiff has not brought to the knowledge of the 1st defendant/Bank any discrepancy in the import documents and simply stated that it had orally informed the Bank. For the purpose of filing the suit, the plaintiff has prepared two representations alleged to have been given to the 1st defendant/Bank. Having communicated about the acceptance of the documents by the plaintiff, it is the legal obligations on the part of the 1st defendant/Bank to honour the LC payment on the respective due dates. In fact, there was no discrepancies in the import documents. Thus, the 1st defendant/Bank sought for vacating interim injunction.

8. It is the submission of the learned counsel for the plaintiff that the plaintiff-company is doing the business of manufacturing and exporting of Bath and Kitchen Vanity products. For the purpose of smooth acquisition of raw materials and to streamline the same, the plaintiff engaged the services of the defendants 2 & 3, who are at China. The raw materials from various vendors were procured based on the instructions/requirements of the plaintiff-company and the same was consolidated and shipped to the plaintiff by the defendants 2 & 3. For the purpose of smoothening the operation, the plaintiff has also established their branch office at China and appointed the 4th defendant as General Manager of their branch at China and he was

incharge of all its activities. But, subsequently, the defendants 2 & 3 in collusion with the 4th defendant had fraudulently misappropriated the funds forwarded by the plaintiff; that apart, the defendants 2 & 3 also shipped several products/material which were below the required quality and they had failed to take them back and replace them with proper products. The raw materials sent by the defendants 2 & 3 are not upto the required quality. Further, the defendants 2 & 3 have not submitted necessary documents under the terms of letters of credit, which are necessary for releasing the payment. The action of the defendants 2 & 3 constitutes a serious violation of the terms of the LC and as such, the same is sufficient for preventing payment to them.

9.In this regard, the learned counsel for the plaintiff relied upon the judgment reported in **1988(1) SCC 174 [U.P.Co-operative Federation Ltd., Vs. Singh Consultants and Engineers (P) Ltd]**, wherein it has been held that fraud will mean the fraud of the beneficiary and fraud on somebody else; if the Bank detects with minimal investigation the fraudulent action of the seller, the payment could be refused; it may be difficult for the bank to take a decision on the alleged fraud and in such cases, it would be proper for the Bank to ask the buyer to approach the Court for an injunction.

10.For the same proposition, the learned counsel for the plaintiff has relied upon another judgment reported in **(2001) 1 SCC 663 [Federal Bank Vs. V.Jog Engineering]**, wherein it has been observed that there

must be knowledge of fraud on the part of the Bank at any time before payment and also that it would be sufficient from contemporary documents and the unexplained failure of a beneficiary to respond to the attack, to draw the realistic inference of 'fraud'.

11. Thus, by relying upon the said judgment, the learned counsel for the plaintiff submitted that in the instant case, since the defendants 2 & 3, in connivance with the 4th defendants, have committed fraud and since they did not submit the necessary documents under the terms of letter of credit, the 1st defendant-Bank has to be restrained from making the payment.

12. It is the next fold of submission of the learned counsel for the plaintiff that it is required to be ensured by the 1st defendant-Bank before releasing the LC that all the credit documents required in compliance with the conditions of LC are sent by the defendants 2 & 3 and in case, if there is any discrepancy in the credit documents received by the 1st defendant-Bank from the defendants 2 & 3, the 1st defendant-Bank has to communicate the same to the plaintiff. But, in the instant case, the 1st defendant has not pointed out any discrepancy in the credit documents received by them from the defendants 2 & 3, in the communications sent by the 1st defendant to the plaintiff in respect of each letter of credit. In this regard, the learned counsel for the plaintiff has also invited the attention of this Court to the communications sent by the 1st defendant-Bank and submitted that except in 2 LCs, in all other LCs discrepancies were not pointed out by the 1st

defendant/Bank to the plaintiff. Letter of credit opened by the 1st defendant/Bank on the instructions of the plaintiff is a conditional one. Letter of credit will be released in favour of the defendants 2 & 3 only as and when the LC conditions are complied with by the defendants 2 & 3 and all the required documents are received by the 1st defendant/Bank.

13. The learned counsel for the plaintiff would also submit that all the credit documents have to be sent by the defendants 2 & 3 through their Bank to the 1st defendant-Bank. On receipt of such documents, the 1st defendant has to verify all the credit documents required for release of LC. In case, if there is any discrepancy in the credit documents required for release of LC, the 1st defendant/Bank has to communicate the same to the plaintiff; in this regard, the learned counsel for the plaintiff has invited the attention of this Court to the Article 14 of the Uniform Customs and Practice for Documentary Credits (UCP) 600 and submitted that as per Article 14, the Bank must examine the credit documents and communicate the discrepancy; but inspite of communicating the discrepancy, if the plaintiff had chosen to waive the discrepancy, the Bank can proceed further to release the payment under the LC. But, in the instant case, the question of waiving the discrepancy by the plaintiff does not arise since the 1st defendant has not communicated the discrepancy in the credit documents. In other words, since no discrepancies were indicated by the 1st defendant, the plaintiff did not raise any objection. Since the 1st defendant, having failed in their responsibility and having obtained an acceptance letter without bringing to light the correct facts, now

cannot seek to estop the plaintiff from raising objections or seek protection under Clause 16(f) of UCP Guidelines 600 for waiver of objections. Since the 1st defendant acted in contrary to the UCP Guidelines 600 and since the 1st defendant neglected in their duty to act in accordance with the UCP Guidelines 600, now the 1st defendant-Bank cannot avail the protection of waiver granted under UCP Guidelines 600. As the 1st defendant-Bank had fundamentally failed to raise the discrepancies and having failed to do so, they cannot now raise the ground that the objections were not raised within the stipulated time by the plaintiff. Therefore, the 1st defendant-Bank is entitled for interim injunction as against the 1st defendant.

14.Per contra, the learned counsel for the 1st defendant/applicant herein submitted that the plaintiff has engaged the services of the defendants 2 & 3 for the purpose of procuring the raw materials from China. The 4th defendant is the Branch Manager of the plaintiff's branch office at China. The defendants 2 & 3 are not third parties. Therefore, the plaintiff is not dealing with any third parties and the plaintiff is dealing with his own men and employees. Therefore, if the plaintiff has any grievance with regard to the sale transaction, it is for the plaintiff to take appropriate legal action against them before the appropriate forum.

15.With regard to the submissions made by the learned counsel for the plaintiff that the 1st defendant-Bank has failed to communicate the discrepancies in the credit documents, it is the reply of the learned counsel

for the 1st defendant that on receipt of original documents from the bankers of the seller of the goods in respect of 23 LCs, the same were scrutinized by the 1st defendant-Bank and all the documents were in line with the conditions of LCs. In fact, all the documents were given to the plaintiff for scrutinizing the same and they had also accepted the documents for payment on the respective due dates of each letter of credit. In this regard, the learned counsel for the 1st defendant has also invited the attention of this Court to the letter given by the plaintiff accepting the documents for payment on the respective due dates for each letter of credit and submitted that since the plaintiff had accepted all the documents for payment based on the said acceptance, the 1st defendant-bank has also confirmed the presentation of documents and respective LC payment through swift message. Since the plaintiff has accepted all the documents for payment, the 1st defendant-Bank must honour its commitment to make payment. Since the plaintiff had accepted all the documents, there is no legal necessity on the part of the 1st defendant to seek waiver of discrepancies. In fact, in two cases, certain discrepancies were pointed out by the 1st defendant; but, inspite of the same, the plaintiff had accepted the documents for payment. Now, after accepting the said documents, only as an after thought, the plaintiff claims that they have sent a letter to the 1st defendant on 21.01.2015 i.e, after a gap of two months; but, the said letter was not received by the 1st defendant/Bank. Further, the learned counsel for the 1st defendant submitted that in the instant case, after collecting the documents the plaintiff has also taken the goods. Therefore, the plaintiff is not entitled to prevent

the Bank from releasing the LCs.

16.The learned counsel for the 1st defendant would further submit that a reading of the entire plaint averments would show that no specific case has been made out by the plaintiff on the ground of fraud; only vague and falls averments were made in the plaint with an intention to obtain injunction order against the defendants. In this regard, the learned counsel for the 1st defendant-Bank relied upon the judgment reported in **(1998) 2 SCC 70 [I.T.C.Limited Vs. Debts Recovery Appellate Tribunal and others]** in support of his contention that merely using the words fraud and misappropriation of funds would not entail the plaintiff to obtain injunction order against the 1st defendant-bank. Thus, the learned counsel for the 1st defendant sought for vacating the interim injunction order.

17.Heard the submissions made on either side and perused the materials available on record.

18.In view of the submissions made on either side, now the question that falls for consideration is that_

whether the plaintiff has made out a prima facie case for granting interim injunction restraining the 1st defendant-Bank from releasing the payments in favour of the defendants 2 & 3 by encashments.

19.The contentions of the learned counsel for the plaintiff are mainly

on two folds_

(1)The plaintiff had engaged the services of the defendants 2 & 3, who are at China, to procure the raw materials from various vendors and to consolidate and ship the same to the plaintiff. For the purpose of smoothening the operation, the plaintiff has also established a branch office at China and the 4th defendant was appointed as General Manager of the plaintiff's branch at China. But, the defendants 2 & 3,

in connivance with the 4th defendant, have fraudulently misappropriated the funds forwarded by the plaintiff. That part, the defendants 2 & 3 had not submitted necessary documents under the terms of letter of credit, which are necessary for releasing the LC. Under such circumstances, if the LCs are released by the 1st defendant-Bank it would cause irretrievable loss to the plaintiff.

(2)As per Article 14 of UCP Guidelines 600, the 1st defendant has to examine the credit documents and communicate the discrepancies in the said documents to the plaintiff. As per Article 16(1) of UCP Guidelines 600, if the documents do not comply, the 1st defendant-

Bank may refuse honouring the same. But, in the instant case, the 1st defendant neglected their duty to act in accordance with the above said guidelines. Having failed to do so, now the 1st defendant cannot escape from the liability and put the same on the plaintiff and prejudice the plaintiff from preventing the loss. On this ground also, the 1st defendant-Bank has to be restrained from release the Letter of credit in favour of the defendants 2 & 3.

20. With regard to the submissions made by the learned counsel for the plaintiff on the ground of fraud said to have been committed by the defendants 2 & 3 in collusion with the 4th defendant, I find that if the plaintiff has any grievance with regard to the sale transaction against the defendants 2 to 4, it is for the plaintiff to take appropriate legal proceedings against them in appropriate forum. Further more, on a reading of the entire averments in the plaint, I find that only vague and bald averments have been made against the defendants 2 to 3 stating that they have misappropriated the funds of the plaintiff in connivance with the 4th defendant and that the defendants 2 & 3 have not submitted necessary documents in terms of the letter of credit, which are necessary for releasing the LC. But, the plaintiff has not given any particulars about the alleged fraud. When a fraud is alleged, particulars thereof are required to be pleaded.

In **2007(8) SCC 110 [Himadri Chemicals Industries Ltd., Vs. Coal Tar Refining Co.,]**, wherein it has been held as follows__

“10.The law relating to grant or refusal to grant injunction in the matter of invocation of a Bank Guarantee or a Letter of Credit is now well settled by a plethora of decisions not only of this court but also of the different High Courts in India. In U.P. State Sugar Corporation Vs. Sumac International Ltd. [(1997) 1 SCC 568], this court considered its various earlier decisions. In this decision, the principle that has been laid down clearly on the enforcement of a Bank guarantee or a Letter of Credit is that in respect of a Bank Guarantee or a Letter of Credit which is sought to be encashed by a beneficiary, the bank giving such a guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer. Accordingly this Court held that the courts should be slow in granting an order of injunction to restrain the realization of such a Bank Guarantee. It has also been held by this court in that decision that the existence of any dispute between the parties to the contract is not a ground to restrain the enforcement of Bank guarantees or Letters of Credit. However this court made two exceptions for grant of an order of injunction to restrain the enforcement of a Bank Guarantee or a Letter of Credit. (i) Fraud committed in the notice of the bank which would vitiate the very foundation of guarantee; (ii) injustice of the kind which would make it impossible for the guarantor to reimburse

himself.

.....

14. From the discussions made hereinabove relating to the principles for grant or refusal to grant of injunction to restrain enforcement of a Bank Guarantee or a Letter of Credit, we find that the following principles should be noted in the matter of injunction to restrain the encashment of a Bank Guarantee or a Letter of Credit :-

(i) While dealing with an application for injunction in the course of commercial dealings, and when an unconditional Bank Guarantee or Letter of Credit is given or accepted, the Beneficiary is entitled to realize such a Bank Guarantee or a Letter of Credit in terms thereof irrespective of any pending disputes relating to the terms of the contract.

(ii) The Bank giving such guarantee is bound to honour it as per its terms irrespective of any dispute raised by its customer.

(iii) The Courts should be slow in granting an order of injunction to restrain the realization of a Bank Guarantee or a Letter of Credit.

(iv) Since a Bank Guarantee or a Letter of Credit is an independent and a separate contract and is absolute in nature, the existence of any dispute between the parties to the contract is not a ground for issuing an order of injunction to restrain enforcement of Bank Guarantees or Letters of Credit.

(v) Fraud of an egregious nature which would vitiate the very foundation of such a Bank Guarantee or Letter of Credit and the beneficiary seeks to take advantage of the situation.

(vi) Allowing encashment of an unconditional Bank Guarantee or a Letter of Credit would result in irretrievable harm or injustice to one of the parties concerned.

In **1998(2) SCC 70 [I.T.C. Limited Vs. Debts Recovery Appellate Tribunal and others]** it has been held as follows_

"15.The principles regarding the payment of amounts covered by bank guarantees or irrevocable Letters of Credit are fairly well settled. They have been discussed in detail in several cases and there is an exhaustive discussion of the principle in *U.P.Coop. Federation Ltd., Vs. Singh Consultants & Engineers (P) Ltd., (1998) 1 SCC 174*. Reference was also made by the learned counsel before us to the judgment of the Calcutta High Court in *United Commercial Bank Vs. Hanuman Synthetics Ltd., AIR 1984 Cal 96*, (to which one of us, Suhas C.Sen, J. was a party). It will be noticed that the above cases do say that the bank has to honour the bank guarantee or Letter of Credit subject of course to the cases of two exceptions where there was fraud or irretrievable injury. In the present case, the contention for the Bank is based on fraud or misrepresentation by the appellant. That is stated to be the cause of action in the plaint.

...

22.What is necessary for the Bank to refuse payment is a case of clear 'fraud' and the bank's knowledge as to such fraud [*Bolivinter Oil S.A. Vs. Chase Manhattan Bank N.A. (1979) 1 Lloyd's Rep 445, CA*]. As pointed by Lord Denning and Lord Lane in *Edward Owen*, the Bank cannot refuse payment merely because according to it the claim was 'dishonest' or 'suspicious' or it appeared to be a sharp practice but it

must be established as 'fraud'. Lord Ackner in *United Trading Corpn. S.A. U Murray Clayton Ltd., Vs. Allied Arab Bank Ltd* , (1985 2 LLR 554, CA), held that the Bank could object to pa`y not because the demand was not 'honestly' made but was made fraudulently. Waller, J. in *Turkiye Vs. Bank of China* (1996 2 LLR 611), said that the questions was whether the demand for payment was 'fraudulent'. Mere allegations and counter-allegations between the parties as to breach of contract, non-payment of advances or non-supply of machinery did not amount to fraud."

In (2006) 2 SCC 728 [Bses Ltd. (now Reliance Energy Ltd) Vs. Fenner India Ltd], wherein it has been held as follows__

"10. There are, however, two exceptions to this rule. The first is when there is a clear fraud of which the bank has notice and a fraud of the beneficiary from which it seeks to benefit. The fraud must be of an egregious nature as to vitiate the entire underlying transaction. The second exception to the general rule of non-intervention is when there are 'special equities' in favour of injunction, such as when 'irretrievable injury' or 'irretrievable injustice' would occur if such an injunction were not granted. The general rule and its exceptions has been reiterated in so many judgments of this Court, that in *U.P. State Sugar Corpn. Vs. Sumac International Ltd.*, this Court, correctly declared that the law was 'settled'."

From the reading of the above said judgments, I am of the opinion that the

1st defendant-Bank having given guarantee bound to honour it as per its terms irrespective of any dispute between the parties. There should be a clear intention as to the fact of fraud and as to the bank's knowledge. Merely making an averment to the effect that the defendants 2 & 3, in connivance with the 4th defendant, have misappropriated the funds and they did not submit necessary document in terms of letter of credit, would not sufficient enough to come to a conclusion that the plaintiff has made out a strong case on the ground of fraud. Therefore, I am of the opinion that on the ground of fraud, the 1st defendant-Bank cannot be restrained from making the payment. If there is any dispute between the plaintiff and the defendants 2 to 4, as observed earlier, the plaintiff has to take appropriate legal proceedings against them before the appropriate forum and the plaintiff cannot seek to restrain the 1st defendant-Bank from releasing the LC.

21. It is the next fold of submission of the learned counsel for the plaintiff that as per Article 14 of UCP Guidelines 600, on receipt of the credit document, the 1st defendant-Bank has to point out the discrepancies in the said documents to the plaintiff by communication. In spite of indication of discrepancies, if the plaintiff chose to allow the discrepancies, then the Bank can proceed further with the release of LC. But, in the instant case, since the 1st defendant has not indicated any discrepancy in the credit documents, now they cannot estop the plaintiff from raising the objection or seek protection under Clause 16(f) of UCP Guidelines 600 for waiving of discrepancies.

22. But, it is the reply of the learned counsel for the 1st defendant/Bank that in the instant case, on receipt of communication, the plaintiff has admitted all the 23 LCs. Though the 1st defendant/Bank has pointed out discrepancies in respect of two LCs, the plaintiff has not chosen to raise any objection. Having accepted all the documents for payment, now the plaintiff is estopped from saying that the 1st defendant/Bank has failed to communicate the discrepancies. In this regard, the learned counsel for the 1st defendant/Bank has also invited the attention of this Court to Letters of acceptance of documents for payment in respect each LC issued by the plaintiff. In the letter of acceptance dated 17th November, 2014, the plaintiff has stated as follows_

“Reference, to the import documents received under the LC mention above. We hereby accept the documents for payment on due date ie., 30.01.2015. We kindly request you to release the original documents and hand over to our representative K.James, whose sign is attested below”

Likewise, in all other letters of acceptance, the plaintiff has used the same wordings as mentioned above.

23. Having accepted the documents for payment, now the plaintiff cannot turn around and say that the 1st defendant/Bank has failed to communicate the discrepancies in the documents. Hence, having communicated about the acceptance of the documents for payment, now it is

legal obligation on the part of the 1st defendant/Bank to honour the LC payments on the respective due dates.

24. There are two exceptions in respect of non-release of payment of LC. The first is that it must be clearly shown that the fraud of an egregious nature has been committed and to the notice of the bank. The second is that injustice of the kind which would make it impossible for the guarantor to reimburse himself or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted. It is not enough to allege fraud but there must be clear evidence about as to the fact of fraud as well as to the bank's knowledge of such fraud. But, in the instant case, none of the above said ingredient has been shown by the plaintiff.

25. No document has been filed in support of the plaintiff's contention that they had incurred loss to the tune of several crores due to the fraud committed by the defendants 2 to 4. Therefore, I am of the opinion that the plaintiff has not made out any *prima facie* case for continuation of the interim injunction granted by this Court. The interim injunction granted by this Court is liable to be vacated.

For the foregoing reasons, the Original Application No.101 of 2015 is dismissed and the interim injunction granted by this Court is vacated. Consequently, the Application No.954 of 2015 is allowed.

23.04.2015

SSV

R.SUBBIAH, J.

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