IN THE HIGH COURT OF PUNJAB AND HARYANA AT

CHANDIGARH.

CR 3356 of 2012

Date of Decision: August 6, 2015

Rakesh Kanda

…..Petitioner

Vs.

Allahabad Bank and others

…..Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI.

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Present:- Mr.R.K Chibbar, Sr. Advocate with
Mr. Gaurav Mankotia, Advocate
for the petitioner.

Mr. Sumit Batra, Advocate for respondent No.1.

Mr. Ajay Monga and Mr. Devmani Bansal, Advocates
for respondent No.4.

Mr. N.C. Kinra, Advocate for respondent No.6.

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M.M.S. BEDI, J.

Plaintiff, sole proprietor of G.R. Industries has preferred this revision petition under Article 227 of the Constitution of India challenging the order passed by the trial Court dated March 7, 2012 (annexure P-4) and the order passed by lower Appellate Court dated May 5, 2012 (annexure

P-5) dismissing the application of the plaintiff- petitioner under Order 39 Rules 1 and 2 CPC.

Briefly stated case of the plaintiff- petitioner as per his pleading is that he is importer of raw material and defendant- respondents No.2 and 3 i.e. Sims Copper SDN BHD and Synergic Industrial Material Services Pvt. Ltd. respectively are though separate entities but are being run by same person and are part of same group of Companies and they are exporters. Defendant- respondent No.4-Malayan Banking BHD is the negotiating Bank and defendant No.5 is a Shipping Company through which the material was to be supplied and defendant No.6 is the forwarding agent in India which was to receive the raw material. The plaintiff - petitioner is a foreign importer and was required to arrange a Letter of Credit. Defendant- respondent No.1- Allahabad Bank is an opening bank who had issued Letter of Credit. The plaintiff has sought a decree for permanent, mandatory and perpetual injunction restraining defendant No.1 for opening and honouring the Letters of Credit bearing No. 0192711FLU000296 dated November 7, 2011 and No.0192711FLU000334 dated December 2, 2011 and for restraining defendant No.4, the negotiating Bank from taking any action or making any payment under the above said Letters of Credit alleging that a fraud has been committed by defendant-respondents No.2 to 6.

It is the case of the plaintiff- petitioner that he is doing the business in the name and style of G.R. Industries and is engaged in manufacturing and trading of copper wire/ rod and aluminum wires by importing raw material from defendant- respondents No.2 and 3. The import transactions were based on the Letters of Credit opened by the plaintiff through his bankers Allahabad Bank i.e. defendant- respondent No.1. The plaintiff- petitioner had placed order with defendants No.2 and 3 who were claiming that they had dispatched the goods but the same were not received in India. Even through the internet tracking the plaintiff was not in a position to know about the cargo containers. Thus the plaintiff- petitioner claims that the material as ordered by him has not been received but still defendant No.1 was bent upon to release the amount in favour of defendants No.2 and 3. Plaintiff claiming that he has been defrauded seeks to restrain defendant No.1 from releasing the amount of Letters of Credit and also sought an interim injunction restraining defendant No.1 from honouring the Letter of Credit dated November 7, 2011 and December 2, 2011.

Defendant No.1 appeared through Manager and filed affidavit stating that they had been informed about the fraud being played upon the plaintiff for them having not been supplied the goods and that they had further conveyed the same to the beneficiary bank i.e. defendant No.4, however, no other written statement was furnished by the bank of the defendant- respondent no.1 and opted to stay away after seeking time to file written statement.

The trial Court refused to grant any interim injunction on the ground that the plaintiff has got equally efficacious remedy available to him by claiming damages. Finding no prima facie case in favour of the plaintiff, his application under Order 39 Rules 1 and 2 CPC was dismissed.

An appeal was preferred before the first Appellate Court. The first Appellate Court taking into consideration the facts of the case disposed of the appeal by passing the following order:-

> "10. In view of the above discussion, the appeal is disposed of by directing the defendant no.1 to take its own decision in the matter relating to releasing or withholding of the amount in respect of the letters or withholding of the amount in respect of the letters of credit dated 7.11.2011 and 2.12.2011, by 26.5.2012. For the sake of dealing with the above matter, the bank or its authorities concerned shall be at liberty to ask the parties concerned to furnish the relevant documents or the other relevant material as may be required for deciding above matter. The bank shall be at liberty to impose such condition or to obtain such any such guarantee or indemnity as may be warranted in accordance with the provisions of law. The parties concerned are directed to appear before the Ld. Trial Court on 31.5.2012. Till then, that is upto 31.5.2012, the amount due in respect of the letters of credit shall not be released by the bank. It is clarified that the direction regarding non releasing of the

> amount in respect of the letters of credit till 31.5.2012, has been issued merely with a view to safeguard the interests of the parties concerned till the matter is decided by the bank and thereafter to give a time of a few days so that any party, who considers to be aggrieved by the decision of the bank, can seek the remedy in relation to the same as per the provisions of law. It is therefore, clarified that, the above interim direction shall automatically cease to operate after 31.5.2012 and the inter-se rights and liabilities of the parties shall thereafter be governed by the decision of the Allahabad Bank or by the orders if any, to be issued by the trial Court or any other competent Court of law. It is further clarified that the observations made herein above shall have no bearing on the merits of the case pending before the Ld. trial Court. The record of trial Court be returned along with a copy of this order and the appeal be consigned to the Record Room."

A perusal of the above said order indicates that a relief for short duration was granted till May 31, 2012 requiring the defendant- respondent Bank to take its own decision relating to releasing or withholding of the amount in respect of letters of credit dated November 7, 2011 and December

2, 2011. Aggrieved by the order passed by the lower Appellate Court, the plaintiff has preferred the present appeal.

The revision petition has been vehemently opposed by respondent No.4-Malayan Banking Berhad, claiming that in view of the judgment of the Supreme Court in **Federal Bank Vs. V.M. Jog Engineering Limited**, AIR 2000 SC 3166 and Section 41 of Specific Relief Act, the suit is prima facie not maintainable as such the interim relief granted even for short duration by the lower Appellate Court is not sustainable in law.

The revision petition was mainly opposed on the ground that petitioner being a buyer, respondent No.1 the issuing Bank having issued Letters of Credit, respondents No.2 and 3 being sellers and respondent No.4 a Foreign Bank who had negotiated the Letters of Credit i.e. Negotiating Bank, the banks dealing with the documents and not with goods and Letter of Credit being an independent contract between the banks as such the banks are not concerned with the contract between the buyer and the seller or movement of goods as such neither suit is maintainable nor any injunction could be granted.

Mr. Chibbar has drawn the attention of this Court to the pleadings as well as the documents which are appended with the plaint in order to establish that the plaintiff has got prima facie a strong case in his favour. In order to establish that a fraud has been played on the plaintiff, attention has been drawn to the FIR dated February 27, 2012 filed at Klang

Selatan, Malaysia by Reshma Yousuf BTE Ghulam Yousuf one of the Directors of defendant- respondent No.5 Diffreight Agencies (M) SDN BHD, Malaysia which had to ship the raw material to India and three bills of lading, forged by defendant- respondents No.2 and 3. He also argued that on April 20, 2012, the plaintiff had filed a complaint before the Commissioner of Police, Ludhiana, for registration of case under Sections 465, 467, 468, 471 IPC read with Sections 420/511 IPC against defendants No.2 and 3, the exporter of raw material from Malaysia to the plaintiff, in Ludhiana. He has drawn the attention of this Court to the contents of FIR which reads as follows:-

> "6. That on the receipt of the above said documents furnished by the exporter stationed in Malaysia by the bankers, at Ludhiana, of the applicant, it was found that according to the documents received by the bank, the consignment in question was said to be contained in container No. TRLU3357750 (Vessel CSAV RENAICO) AND YMLU3051411 (Vessel SINAR BUTTON V.1595) and when tracking was made on internet regarding the status of the consignment, said to be contained in above mentioned container, it was found that there was no information available on the internet regarding the status of the consignment. Further inquiries

from the shipping agent, Malaysia reveals that the bill of lading as furnished by the exporter to the bankers of the undersigned too were found to be faked and similarly, the shipping agent stationed at Ludhiana, on the dry port also feigned ignorance about the container number as well as the consignments in question. Thus, it became apparent that the exporter aforesaid was trying to cheat the undersigned by submitting faked documents with the bankers of the undersigned with intend to take away the amount as mentioned in the invoices under the letters of credit got issued by the undersigned banker without sending any material.

7. That on the discovery of the attempted fraud by the exporter and the submission of the forged and fabricated documents, the undersigned approached his bankers not to make the payment to the exporter under the letter of credit and when bank did not agree to the request of the undersigned, he had to approach the court for the grant of an injunction restraining the bank from releasing the amount in favour of the exporter. The Hon'ble

> Court at Ludhiana had already restrained the bank from releasing the amount under the letter of credit issued by it."

He has also submitted that M/s Millennium Wires (P) Limited and State Trading Corporation of India (the parties on whom similar fraud was committed by defendant No.3 in the present case) had filed a suit in Delhi High Court for relief in the similar terms and the High Court had granted the said relief. He has also placed reliance on the order dated March 2, 2012 alongwith memo of parties, annexure P-8 wherein High Court had passed an order that defendant No.2 would be restrained from taking any benefit or taking any action under the Letters of Credit.

Counsel for defendant- respondent No.4 has vehemently opposed the grant of any relief to the plaintiff-petitioner claiming that the suit of the plaintiff is not even maintainable and deserves to be dismissed under Order 7 Rule 11 CPC. He has also argued that the only grievance of the plaintiff- petitioner is that there is breach of contract by respondents no.2 and 3 but the documents had been presented by SIMS to respondent No.4 which were in terms of Letter of Credit as such these were negotiated by respondent No.4 on November 9, 2011 with respect to the first LC for US $ 197749.73 and on December 8, 2011 with respect to other LC for US $ 182821.41 and the said amount was paid to the beneficiary i.e. SIMS (respondents No.2 and 3) as respondent No.4 was the negotiating Bank. The documents were forwarded to respondent No.1 and had confirmed by

Swift Message and that the documents had been accepted and agreed to make payment on due date i.e. February 6, 2012 and March 5, 2012.

In order to meet the arguments of Mr. Chhibbar regarding fraud, learned counsel for respondent No.4 has submitted that it is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to banks knowledge to such fraud and also that the order of injunction restraining the realization of Bank guarantee or Letters of Credit should not be ordinarily made. The documents have already been negotiated and petitioner himself accepted the documents and the issuing bank vide Swift Messages dated December 5, 2011, January 7, 2012 and January 12, 2012 undertook to pay the amount due under LC of maturity i.e. February 6, 2012 and March 5, 2012. In support of his contentions regarding obligations of issuing bank, reliance was placed on **United Commercial Bank Vs. Bank of India**, AIR 1986 SC 1426 and **Federal Bank's** case (supra) to contend that injunction cannot be granted on the ground of breach of contract. Reliance was also placed on **State Trading Corporation Vs. Millennium Wires**, 206 (2014) DLT 430 (DB), wherein the Division Bench of Delhi High Court had upheld the rejection of plaint and vacation of interim orders after discussing the relevant law on Letters of Credit. The said order was challenged before the Supreme Court. Reliance was place on the judgment of Supreme Court passed in CA Nos.3103, 3014 of 2014 upholding the orders of Delhi High Court.

After considering the arguments of learned counsel for both the parties and carefully going through the judgments cited by learned counsel for both the parties, I am of the opinion that the Appellate Court vide order dated May 5, 2012 has rightly declined to grant the interim injunction merely on the vague allegations of fraud and breach of contract by respondents No.2 and 3. Mere pleading of fraud is not sufficient enough to grant injunction against respondent No.1 where the performance of Letter of Credit is to take place. A reading of contents of the plaint does not disclose any cause of action against respondents No.1 and 4. The trial Court in **State Trading Corporation's** case (supra) has rejected the plaint under Order 7 Rule 11 CPC in similar circumstances. The said order was upheld by Delhi High Court as well as by Supreme Court in CA Nos. 3103 and 3104 of 2015. The scope of interference by the Courts in restraining the banks from honouring their commitments and guarantees is very meager. It is settled principle of law that the banks must be permitted to honour their commitment without interference by the Courts except where there are patent cases of fraud of which the bank must have notice. The risks taken by the merchants cannot be imposed upon the banks. So far as the knowledge of the bank pertaining to the alleged fraud is concerned, it has to be pleaded and established in order to seek an interference from the Courts so far as the injunction against realization of bank guarantee or Letters of Credit is concerned. In this context, the reliance can be made to the following judgments:-

i) **I.T.C. Limited Vs. Debt Recovery Appellate Tribunal and others**, AIR 1998 SC 634. In the said case it was held that mere allegation of non-supply of goods by seller to buyer did not by itself amount in law to a plea of fraud as understood by the Branch of banking law. By merely characterizing non-movement of goods as fraud, the bank in a state for recovery on the basis of Letter of Credit cannot claim that there was cause of action based on fraud or misrepresentation. The knowledge of the bank regarding fraud has to be established.

ii) In **Federal Bank's** case (supra), it was held that it is the obligation of the issuing bank to honour the Letter of Credit. Said judgment was based upon the provisions made in Uniform Customs and Practices for Documentary Credit -600 (UPC-600) framed by ICC. In the above said judgment, the Apex Court had held that in order to obtain an injunction against the issuing bank it is always necessary to prove that the bank had knowledge of the fraud. It is both fraud and knowledge which are required to be established before seeking any injunction against the issuing bank. It was laid in the said judgment that once the issuing Bank had certified the documents which were presented to the negotiating bank by the seller, the said bank could not turn round and refuse on the ground that on further scrutiny made by it long after the negotiated bank parted with the money was wrong.

iii) In **State Trading Corporation of India's** case (supra), relying upon Article 16 of Uniform Customs and Practices for Documentary Credit, it was observed that it is not merely enough to allege fraud but there must be clear evidence that the concerned bank had notice or knowledge of the alleged fraud.

In view of the above said judgments, the basic requirement to seek injunction that the respondent banks had knowledge and notice of the fraud is absent in the pleadings as well as from the material which has been produced by the plaintiff- petitioner.

In view of the above circumstances, I do not find any ground to interfere in the impugned order.

Dismissed.

August 6, 2015 (M.M.S.BEDI)
sanjay JUDGE