IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

RSA No.3013 of 2004
Date of decision : 07.10.2015

M/s Bhagwan Dass and sons

...Appellant

Versus

M/s Sawhney International Trade Links, Gurgaon and ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL.

1. Whether reporters of local newspapers may be allowed to see judgment ?
2. To be referred to reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present: Mr. A.S. Chadha, Advocate for appellant.

Mr. H.N. Mehtani, Advocate for respondent No.2.

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AMIT RAWAL, J. (Oral)

The appellant-plaintiff is in Regular Second Appeal against the judgment and decree of the lower Appellate Court, whereby judgment and decree of the trial Court dated 29.04.2003, decreeing the suit for recovery of amount of ₹4,49,921/- alongwith pendente lite interest @ 12% p.a. from the date of filing of the suit till actual realization of the decretal amount, has been set aside.

Mr. A.S. Chadha, learned counsel appearing on behalf of appellant-plaintiff submits, that lower Appellate Court, being last Court of fact, has committed grave illegality and perversity in not referring all the documents, in essence, misdirected in not observing the cumulative effect of the documents exhibited and proved on record. Had it been so, there would be no occasion for it to disagree with the findings rendered by the trial Court. He further submits that suit for recovery of claiming the aforementioned amount was filed against M/s Sawhney International Trade Links, Gurgaon-defendant No.1. Defendant No.2 i.e. State Bank of Patiala being a statutory body, on request of defendant No.1, issued two irrevocable letter of credit namely SBP/SITL/1/89 and SITL/2/89 for ₹5 lacs and ₹2 lacs respectively.

The appellant-plaintiff supplied the Dasuti/Cotton cloth to the defendant No.1 against the invoice No.9 dated 21.06.1990 (Ex.P6). Since payment was to be received by the plaintiff after expiry of 45 days, which was grace period for honoring the payment, the State Bank of Patiala did not pay the amount and accordingly cause of action arose in claiming the aforementioned amount. He further submits that preceding to the filing of the suit, legal notice dated 19.11.1990 Ex.P10 was served upon State Bank of Patiala and the same was replied through Advocate vide letter dated 12.12.1990 Ex.P11, wherein for the first time story of non-compliance of the terms and conditions of the irrevocable letter of credit had been coined. He further submits that there had been exchange of correspondences with defendant Nos.2 and 3 i.e. State Bank of Patiala and Punjab and Sind Bank, wherein time and again there is a reference of the aforementioned irrevocable letter of credit and as well as non-payment thereof. The trial Court on the basis of oral and documentary evidence decreed the suit. Aggrieved against the judgment and decree of the trial Court, defendant

No.1 i.e. M/s Sawhney International Trade Links, Gurgaon and as well as State Bank of Patiala filed the appeal i.e. appeal bearing nos.79 of 2003 and 78 of 2003. The Lower Appellate Court though dismissed the appeal filed by the defendant No.1 but accepted the appeal of the bank on solitary ground that invoice Ex.P6 did not bear L/C number, therefore, there was a gross breach of terms and conditions of irrevocable letter of credit.

He further submits, that lower Appellate Court has erroneously arrived at findings, which is totally contrary to the documentary evidence proved on record and thus following substantial questions of law arises for determination by this Court:-

1) Whether an irrevocable revolving letter of credit stands at part with the bank guarantee?

2) Whether the issuing bank of irrevocable revolving letter of credit can absolve its liability by merely alleging that the number and date of the letter of credit were not written on the bill of exchange when admittedly the word “under L/C were written”.

3) Whether a perusal of Ex.P3 and Ex.P4 read with Ex.P7 and Ex.P9 would clearly demonstrate that the respondent No.2 was fully aware that the documents were negotiated under the said letter of credit and even if the statement of any fact was not accurate, the bank could not absolve its liability? Further, the so-called inaccuracy stood rectified by subsequent notice.

4) Whether for Section 14 of the Negotiable Instruments Act, 1881, it is necessary to have the draft discounted in order to

enable the draft to be transferred to the bank so that it becomes holder of document in due course?

There is no representation on behalf of respondent No.1.

Mr. H.N. Mehtani, learned counsel appearing on behalf of respondent No.2 submits that there is no illegality and perversity in the findings rendered by the Lower Appellate Court, for the reasons that there was breach of terms and conditions of irrevocable letter of credit at the instance of the appellant-plaintiff and heavily relied upon the findings rendered by the lower Appellate Court in paragraph No.15 of the impugned judgment, which read thus:-

> *"15. I have given my careful though to the point under consideration. There can be no dispute with the proposition that a bank which gives a performance guarantee must honour it. It also cannot be questioned that a letter of credit sometimes resembles and is analogous to a contract of guarantee. At the sametime, it has to be noticed that the liability of the banker would be strictly governed by the terms and conditions agreed between the parties. As would be evident from a perusal of clauses 8 and 10 of Ex.P3 and Ex.P4, it had been agreed that "All documents must bear the number and date of this letter of credit and that of the relative import licence" and that "Drafts drawn under this letter of credit are negotiable by Punjab and Sind Bank, New Friends Colony, New Delhi only". The former quotation is a reproduction of clause 8; while the latter is reproduction of clause 10 of Ex.P3 and Ex.P4. As would be evident from a perusal of Ex.P7, all that indicated on the top of it was that it was being sent*

under the L/C. It does not indicate the number and date of the letter of credit. In the absence thereof, it was not contractually feasible for the SBP-appellant to honour it. It also cannot be lost sight of that respondent No.3 presented that document as a outward bill for collection. That Hundi is not proved on the file to have been negotiated by the Punjab and Sind Bank for purposes of payment relatable to Ex.P3 and Ex.P4 but for collection {OBC}. The non-recording of the number and date of the letter of credit Ex.P7 and the fact that it was not negotiated by the Punjab and Sind Bank were reasons valid enough for the SBP-appellant to deny its commitment to honour the same under the letter of credit Ex.P3 and Ex.P4. The judicial pronouncements relied upon by the learned counsel for the plaintiff-respondent do not at all indicate that a banker would be duty bound to honour the guarantee irrespective of terms and conditions governing the transaction between it and the other party thereto. While elaborately conceptualising the extent of liability of a banker under a bank guarantee and irrevocable letter of credit, the Hon'ble Supreme Court had held in all those cases that the guarantee would be honoured as per its terms. In that view of things, there is no escape from the conclusion that the SBP-appellant was entitled to validly decline to honour the commitment as the relevant presentation was in violation of the agreed terms and conditions of the irrevocable letter of credit."

He further submits that in view of aforementioned reasoning given by the lower Appellate Court, being last Court of fact, no interference is warranted, much less, no substantial questions of law arises.

I have heard learned counsel for parties and appraised the paper book and as well as seen the record of Courts below.

No doubt that terms and conditions of irrevocable letter of credit are sacrosanct between the parties but the Court cannot remain oblivious of the entire documents produced on record and focus its view only on solitary document i.e. Ex.P6 i.e. invoice bearing No.9 of 21.06.1990. Invoice bearing No.9 did not mention L/C number but there are other correspondences i.e. Ex.P8 and Ex.P9, which reveals that State Bank of Patiala, time and again had referred to the same very L/C number for realization and consideration of the payment. Ex.P8, which is letter written by the State Bank of Patiala to Manager of Punjab and Sind Bank, New Friends Colony, New Delhi for payment of outstanding amount bears invoice number. Hundi Ex.P7 though does not bear the L/C number but the cumulative effect of reading of all the documents referred above would leave to an irresistible conclusion that bank had been corresponding with the Punjab and Sind Bank with regard to the irrevocable letter of credit aforementioned and not with any other business transaction. The trial Court while noticing the aforementioned specific stand of the bank gave following reasons in decreeing the suit:-

> *"The Bill of exchange Ex.P7 also mentioned Bill under LC. There is a date on its making as "21.6.90" and then "Due date as 9.8.90" is mentioned i.e. 45 days after preparation of the Bill of exchange. Then it mentions further term after 45 days from the date of this Hundi. "Please pay to Punjab & Sind Bank, a sum of Rs.304001/00 (Three Lacs Four Thousand and one only)". This bill of exchange has been drawn against invoice No.9 dated 21.6.90. The goods were dispatched vide G.P.*

No.043217-346-47-48-535-55-607 to 609 through Golden Jaipur Trp. Co. and the said receipt bears the stamp of Punjab & Sind Bank and then words "OBC-273" and dt. 21.6.90 is written in the stamp. This receipt by the State Bank of Patiala has not been denied by it. Now the main question which arises for consideration is that as to whether this bill was under the relevant letter of credit or not? As stated by PW1-Arun Kumar, such Bills which remarks as under LC, used to be presented earlier also and used to be accepted under letter of credit Ex.P# and Ex.P4. The very exhibition of work under LC gives a clear supposition that the concerned bill of exchange was sent under some LC, if not under a specific LC Ex.P3. It was the duty of the defendant No.2, State Bank of Patiala to have sought clarification either from the plaintiff or from his banker defendant No.3 as to which letter of credit was suffered to on the basis of the bill of exchange. Though, it cannot be accepted without a pinch of salt that officials of State Bank of Patiala has no knowledge of the letter of credit under which this bill was sent to them. Even accepting their contention, the officials of State Bank of Patiala cannot be allowed to wriggle out and escape from their responsibility to at least seek the clarification about the particulars of the letter of credit under which the bill of exchange was sent to them. To state that bill of exchange was not raised under any letter of credit, it apparently covered not only that it exhibited and words "under LC", but even the invoice No.9 dated 21.6.90 explicitly contains the terms against LC. Thus, the defendant No.2 cannot escape but to honour the liability guaranteed by it under letter of credit. On this point reliance can be placed upon AIR 1982 Delhi 78 Pesticides India, Props Mewar Oil & Gen. Mills Ltd. Vs. State Chemicals and Pharmaceuticals

Corporation of India Ltd. and ors. and *AIR 1981 Supreme Court 1426 United Commercial Bank Vs. Bank of India and ors.*

Another fact which cements this thought, is the admission of the defendant in another suit filed by the defendant against the defendant No.1 and its proprietor, copy of the plaint of which is Ex-MW. In para No.25 to 31 of the plaint, the two letter of credit issued by this bank in favour of plaintiff on behalf of defendant No.1 have been dealt with in detail and bill of exchange paid by this bank to the present plaintiff in connection with earlier transactions has been mentioned in para No.29. This bill of exchange which is subject matter of the present suit has been mentioned in para No.32 of the plaint of defendant No.2, which is reproduced as under:-

> *"That a bill of the sum of Rs.3,04,001/- was also submitted by the bankers of the above concerned on 17.7.90 but was not paid by plaintiff Bank on 17.7.90 because plaintiff bank had not admitted its liability in respect of the said bill. It is submitted that the above concern has served legal notice on the plaintiff Bank stating that it proposes to file suit to enforce the letter of credits in suit. As such the liability of the plaintiff Bank in respect of this bill is contingent and in case it is established, plaintiff bank would be filing separate suit for recovery of the said sum.*

Thus, there is no escape but to conclude that a letter of credit holds the same position as that of a bank guarantee and an irrevocable letter of credit holds more significance. Since the Hundi (bill of exchange) and the bill invoice both contained stipulation of "LC" in the present case, it was manifest that the bill of exchange was raised in terms of specific letter of credit. Non-mentioning *of the number and date thereof could be either out of belief that since during the earlier transactions the defendant No.2 had been accepting similar bills with similar terms and writing and had been making payment thereof or that writing of word under LC was considered to be sufficient. Even if it was not specified, the defendant No.2 should have sought clarification in respect of the impugned Bill of exchange. Even in their own plaint filed in another suit against the present defendant No.1 by the present defendant No.2, it has been admitted by it that at least three such bills were accepted by it. The payment thereof was to the present plaintiff or his banker though the same was not collected from defendant No.1 M/s Sawhney International Trade Links, up to the filing of that suit. In case it was so in the case of other three bills why it could not be so in respect of the impugned bills of exchange. There is no reply to this query. The words OBC meant "Outer Bills of Collection". This could not mean that the bill sent was under the general transaction of the bank or to the least as not covered under specific letter of credit. Similarly, to say that the bill was not negotiated by defendant No.3 bankers of the plaintiff and therefore, there was a violation of clause 10 of the letter of credit is again a misnomer as it was not a pre condition of the letter of credit that every bill have to be negotiated first. As per the requirement of Section 14 of Negotiable Instrument Act, it was only lame plea taken by the defendant to avoid its liability to make the payment. In all fairness to the accepted norms of the trading business in the country and also to the liabilities of the bankers, who issue bank guarantees or letter of credits it need be fairly. So, I hereby conclude that the plaintiff firm is entitled to recover the amount in question from the defendant No.2 also in terms* *of irrevocable letter of credit. It has also been held that the defendant No.1 is also liable to pay the bills. Resultantly, this issue is hereby decided in favour of the plaintiff and against the defendants No.1 & 2.*"

The Lower Appellate Court could dispute the aforementioned findings except by relying on the Ex.P7 i.e. Hundi and as well as invoice Ex.P6. It is apparently, deduced that bank i.e. State Bank of Patiala-defendant No.2-respondent No.2 had issued irrevocable letter of credit on the request of respondent No.1, in essence, in case of any failure to make payment, State Bank of Patiala had indemnified defendant no.1 to make payment to the appellant-plaintiff.

There is another aspect of the matter. All the aforementioned documents particularly Ex.P3, Ex.P4 and Ex.P7 irrevocable letter of credit and Hundis leads solitary conclusion that documents had been negotiated as per provision of Section 14 of the Negotiable Instruments Act.

In view of aforementioned facts, in my view, judgment and decree rendered by the Lower Appellate Court suffers from illegality, much less, reasoning assigned is fallacious, thus, questions of law aforementioned are answered in favour of appellant-plaintiff and against the respondent-defendant No.2.

Accordingly, present appeal is allowed, impugned judgment and decree of Lower Appellate Court is set aside and judgment and decree of the trial Court is restored.

07.10.2015 **(AMIT RAWAL)**
pawan **JUDGE**