IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

111 **Civil Revision No.1259 of 2017(O & M)**
Date of Decision:21.02.2017

Infinity Laboratories Pvt.Limited ....petitioner

Versus

J.B.Khokhani & Co.and others .....respondents

CORAM: HON'BLE MR.JUSTICE ARUN PALLI

Present: Mr.Damanbir Singh Sobti, Advocate
for the petitioner

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ARUN PALLI, J. (ORAL):

Plaintiff is in revision, arising out of an application for injunction under Order 39 Rules 1 & 2 of the Code of Civil Procedure. The injunction prayed for was declined by the trial Court, vide order dated 30.08.2016, and the appeal preferred against the said order failed, for, it was dismissed vide judgment dated 13.02.2017. That is how, the plaintiff is before this Court. Parties to the lis, hereinafter, shall be referred to by their original positions in the suit.

In a suit filed by the plaintiff, it prayed for a decree for injunction restraining defendant No.3 i.e. State Bank of Patiala, its agents or representatives from making the payment of bills, drawn against the Letter of Credit (LC) bearing No.50587161M0000081 dated 27.04.2016, issued by defendant No.3 in favour of defendant No.2 i.e. Exactchem Limited.

Briefly, the case set out by the plaintiff was/is that it is engaged in manufacturing of medical equipments, and vide indent No. JBK/2016/04/infy01, it had placed an order for supply of 5000 kgs. of

Ketoprofen Nitrile, with defendant No.1 i.e. J.B.Khokhani & Co. And, vide letter dated 26.04.2016, defendant No.1 confirmed the order subject to the terms stipulated therein. The goods were to be supplied against the Letter of Credit to be issued in favour of the supplier i.e.defendant No.2. Resultantly, the plaintiff got issued LC No. 50587161M0000081 dated 27.04.2016, through defendant No.3, in favour of defendant No.2. The LC was issued for supply of 5000 kg of Ketoprofen Nitrile @ USD 38.50 per kg, having total value of goods @ USD 1,92,500/-. On receipt of the LC, through their bank, defendant No.2 supplied the goods and furnished the bills drawn against the said LC. The goods were received by the plaintiff from the port of destination through its agent, and, were got transported by road to the factory site of the plaintiff. However, during the random testing of the merchandise at an in house laboratory of the plaintiff, the goods were rejected in an analysis conducted on 28.06.2016. Plaintiff intimated defendant No.2 through E.mail dated 28.06.2016, that the goods that were supplied, were defective and even requested to send its officials for verification and inspection of the un-tested goods. But to no avail. In the situation, the plaintiff also approached the officials of defendant No.3 to stop the payment drawn under LC, which they refused to do. Thus, the suit.

In reply filed by defendant No.1, it was maintained that the defendant being the indenter for the purchase order, had personally verified the goods and found that the goods supplied by defendant No.2 were not as per the specifications. And prayed for allowing the application.

Whereas, defendant No.2, in its reply to the injunction application, pleaded, inter alia, that it had arranged the shipment of goods and submitted the documents in terms of the Letter of Credit, such as bills, invoice, billing of lading, packing list, insurance certificate of origin (issued by China Council for promotion of international trade also entry-exit, inspection and quarantine bureau), which showed that defendant No.2 had supplied the goods in terms of the requirement of the plaintiff, as per certificate of origin. And the Beneficiary Certificate certified that the material supplied confirmed to the specifications as per GBK/2016/04/infy01 and not JBK/2016/04/infy01, as per the Letter of Credit. Further, defendant No.2 was responsible for arranging the goods to the port of destination i.e.Nhava Sheva only. Plaintiff never raised any dispute as regards the quality of the goods when these were received at the Nhava Sheva port. And, thus, if any problem occurred, during the transportation of the goods to the warehouse of the plaintiff, then defendant No.2 could not be held liable or responsible therefor. It was the responsibility of the plaintiff to check the material before getting the clearance from the competent authority. After the consignment/material reached the port of destination, the plaintiff-firm, through its team handled the goods till they reached the warehouse of the plaintiff i.e.Chandigarh which is at a fairly long distance from Nhava Sheva port. During this period, the plaintiff had full control on the consignment and it seems that the plaintiff also changed the packaging of the goods to suit their convenience. The testing reports relied upon by the plaintiff-firm were denied, for, no such report by an independent laboratory, immediately on arrival of goods, was placed on record.

Defendant No.3-Bank, confirmed in its reply that the bank had indeed issued a Letter of Credit in favour of defendant No.2, pursuant to the request of the plaintiff and the LC issued by the bank was due to be paid on

01.09.2016, though, the plaintiff had requested the bank to stop the payment.

On a consideration of the matter in issue and the material on record, both the courts concurrently reached a conclusion that the case set out by the plaintiff itself, is that it had contacted defendant No.1 and vide indent No.JBK/2016/04/infy01, placed an order, for supply of Ketoprofen Nitrile, therewith. And, defendant No.1, vide its letter dated 26.04.2016, confirmed the said order, subject to the terms stipulated therein. An analysis of the letter dated 26.04.2016, revealed that the said document concerns the plaintiff and defendant No.1, only, for, the said letter/order was executed on the letterhead of defendant No.1 i.e. J.B.Khokhani and Co. and was addressed to the plaintiff. Further, the said letter/document was undersigned by defendant No.1 and confirmed by the buyer i.e.the plaintiff. Thus, clearly the order was placed by the plaintiff with defendant No.1, who purports to be the agent of defendant No.2. Therefore, the agreement that was/is being referred to, was entered into between the plaintiff and defendant No.1. Neither there was any agreement, directly between the plaintiff and defendant No.2, to supply the merchandise nor even by defendant No.2 with defendant No.1. Thus, plaintiff and defendant No.1 had bilaterally entered into the contract. And, in the absence of any written contract between the plaintiff and defendant No.2, liability of defendant No.2 to supply goods/material of a specific nature or quality could not be determined. Therefore, it appeared that liability to supply the requisite material to the plaintiff in terms of the said agreement was of defendant No.1. So much so, even, defendant No.1, in its reply had admitted that plaintiff had placed the order with defendant No.1. Thus, if defendant No.1

claimed to be working as an agent of defendant No.2, and confirmed the goods, rather, it was the duty of defendant No.1 to have checked the goods before they were handed over/delivered to the plaintiff. Whereas, significantly, for the reasons best known to the plaintiff, no relief was claimed in the suit against defendant No.1. Rather, to the contrary, the plaintiff had claimed injunction against defendant No.3 i.e. State Bank of Patiala to injunct the bank, its representatives or agents to make the payments against the Letter of Credit/LC bearing No.50587161M0000081 dated 27.04.2016, to defendant No.2. Defendant No.3-Bank had no concern with any contract/agreement between the plaintiff and defendant No.2. And, in reference to the decision of the Hon'ble Supreme Court in **"United Commercial Bank vs. Bank of India,** CA No.132 of 1980 decided on 26.03.1981, wherein it was observed that the Courts should refrain from granting injunctions restraining performance of contractual agreement arising out of Letter of Credit or a Bank Guarantee, for, a contract of Bank Guarantee or LC was independent of the main contract between the buyer and the seller, the trial Court reached a conclusion that defendant-Bank could not be made to suffer owing to any contractual issue between the parties. Indisputably, the LC was issued for supply of 5000 kg of Ketoprofene Nitrile @ USD 38.50 per kg having total value of goods @ USD 1,92,500/- the consignment was to be shipped before 26.05.2016 with port of destination at Nhava Sheva in the packing of 25 kg drums. After receipt of LC through their Bank as mentioned in the LC, the defendant No.2 had supplied the goods and submitted the Bills drawn against said LC. The goods were got released by plaintiff from the port of destination through its agent and were got transported by road to the factory site. The requisite documents, as regards release of goods i.e.invoices, Bills of lading, custom clearance were brought on record. Thus, both the Courts below concluded that no prima facie case was made out against defendant-Bank, with respect to making payments against Letter of Credit/LC dated 27.04.2016. Further, even the loss that the plaintiff, in the absence of injunction, was alleged to suffer, could hardly be termed as "irreparable loss or injury", for, it could always be compensated with money in the event of the suit being decreed.

The submission of the learned counsel for the petitioner that 5600 kg of Ketoprofen Nitrile was purport to have been sent in a packaging of 9.8 cubic metre, whereas, it was not possible to pack such a large quantity of salt, in the given space, would also not advance the case of the plaintiff. Firstly, nothing in this regard was urged either before the trial Court or even in appeal. Significantly, it is not even the case of the plaintiff in the suit, as well. It appears that grievance of the plaintiff was/is against the quality of the material and not the quantity of goods supplied by defendant No.2. Likewise, the argument; that in terms of item No.47A(3), in Annexure P3, only the goods that are reflected in the negative list, are checked by the custom authorities, at the post of destination, and since the material in question was not reflected in the said list, the plaintiff had no occasion to verify or check its quality, also lacks conviction. Whether the plaintiff indeed could not ascertain or verify the quality of the merchandise at the time of delivery of consignment, is a question that can be conclusively answered, only after the parties shall lead their respective evidence. On the contrary, the case of defendant No.2 is that certificate of origin (issued by the China Council for promotion of international trade also entry-exit, inspection and quarantine bureau) showed that the defendant had supplied the requisite material in terms of the requirement of the plaintiff. And, the Beneficiary Certificate certified that the material supplied confirmed to the specifications as per GBK/2016/04/infy01 and not JBK/2016/04/infy01, as per Letter of Credit. Further, the plaintiff has filed a suit for injunction simplicitor, vide which it seeks to injunct the defendant-Bank from making payment of bills drawn against the Letter of Credit dated 27.04.2016, whereas the principal dispute is between the plaintiff and defendant No.2. Prima facie, unless a declaratory decree or an appropriate relief is sought against defendant No.2, a simple suit for injunction may not even be maintainable.

Needless to assert that the scope of interference in the discretion exercised by the trial Court while granting or declining injunction is extremely narrow, and unless it is proved that the conclusion arrived at by the trial Court was either perverse or suffered from any material illegality, the same cannot be interfered with. Such is not the position in the matter in hand.

In conspectus of the position, as sketched out above, the only and the inevitable conclusion the Courts could reach was to decline the injunction prayed for. No ground is made out. The petition being wholly devoid of merit is accordingly dismissed.

February 21, 2017 **(ARUN PALLI)**
neenu **JUDGE**

Whether speaking/reasoned Yes/No.

Whether reportable- Yes/No