(103) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

1. CR No.3679 of 2016 (O&M)

Date of decision:27.11.2018

Malayan Banking Berhad

…. Petitioner

Versus

Kay Vee Impex and others

…. Respondents

2. CR No.3712 of 2016 (O&M)

Malayan Banking Berhad (MAYBANK)

…. Petitioner

Versus

SR Impex and others

…. Respondents

3. CR No.4458 of 2016 (O&M)

Malayan Banking Berhad (MAYBANK)

…. Petitioner

Versus

G.E. Conductors Pvt. Ltd. and others

….. Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Devmani Bansal, Advocate for the petitioner.

Mr. Manish Jain, Advocate for respondent No.1
(in CR No.3679 and 4458 of 2016).

Mr. Vikram Anand, Advocate for respondent No.1
(in CR No.3712 of 2016).

Mr. Raj Kumar, Advocate for respondent No.2
(in CR No.3679 and 4458 of 2016).

Mr. R.S. Bhatia, Advocate for respondent No.3
(in CR No.3712 of 2016)

Service of respondent No.3 (in CR No.3679 and 4458 of 2016) and respondent No.4 (in CR No.3712 of 2016) dispensed with.

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B.S. WALIA, J. (ORAL)

[1] This order shall decide Civil Revision Nos.3679, 4458 and 3712 of 2016 as the same involve challenge to similar order passed in all three cases dismissing the application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter referred to as "CPC"). Facts of each case are as under :-.

Facts of CR No.3679 of 2016 in case titled as Malayan Banking Berhad vs Kay Vee Impex and others) :-.

[i] Revision petition has been filed challenging order dated 25.02.2016 (Annexure P-13) passed by the learned Civil Judge (Jr. Div.), Jalandhar in Civil Suit No.32 of 22.02.2012 dismissing application filed by the petitioner under Order 7 Rule 11 CPC for rejection of the plaint on the ground that the same did not disclose any cause of action.

[ii] Brief facts of the case leading to the filing of the revision petition are that respondent No.1 (KAY VEE IMPEX) placed an order with respondent No.3 (SIMS COPPER) for purchase of copper rods and in terms of inter se arrangement between respondent Nos.1 and 3, a Letter of Credit was required to be opened by respondent No.1 in favour of respondent No.3 qua the goods for which order had been placed by respondent No.1. On the asking of respondent No.1, respondent No.2 (ORIENTAL BANK OF COMMERCE) opened

Letter of Credit in favour of respondent No.3 on 17.10.2011 for US Dollars 1,76,800. In terms of the Letter of Credit, respondent No.3 presented documents to the petitioner for negotiation on 20.10.2011. Post-negotiation, payment of US Dollars 1,82,103.92 was made by the petitioner to respondent No.3 on 20.10.2011 itself and the documents submitted by respondent No.3 to the petitioner were forwarded by the petitioner to respondent No.2. The documents forwarded by the petitioner to respondent No.2 were accepted by respondent No.2 vide Swift Message dated 31.10.2011 (Annexure P-3) containing a communication to treat the message as acceptance with due date of Letter of Credit in question being 16.04.2012 for US Dollars 1,82,103.92. Thus, respondent No.2 vide its aforementioned communication dated 31.10.2011 accepted the documents of negotiation and confirmed that payment to the petitioner would be made on the date of maturity of the Letter of Credit i.e. 16.04.2012.

[iii] After a few months, respondent No.1 filed a civil suit at Jalandhar on 18.02.2012 on the allegations that the goods for which order had been placed by respondent No.1 with respondent No.3 had not been received by it, nor had been shifted by respondent No.3. Interim injunction was granted in favour of respondent No.1 vide order dated 04.04.2012 restraining respondent No.2 from releasing money in terms of the Letter of Credit to the petitioner. Petitioner in the meantime apart from filing the written statement filed an application under Order 7 Rule 11 CPC read with Section 151 CPC for rejection of the plaint on the ground of non-disclosure of any cause of action against it. The learned trial Court vide order dated 25.02.2016 dismissed the application under Order 7 Rule 11 CPC read with

Section 151 CPC on the ground that the trial was yet to be conducted and evidence led.

[2] Facts of CR No.3712 of 2016 in case titled as Malayan Banking Berhad v.SR Impex and others) :-.

[i] Brief facts of the case are that respondent No.1(S.R.IMPEX) placed an order for purchase of copper rods with respondent No.4 (SIMS Copper) and in terms of inter se arrangement, respondent No.1 approached respondent No.2 (Capital Local Area Bank) for opening a Letter of Credit for USD 1,80,000 in favour of respondent No.4 (SIMS COPPER).

[ii] Respondent No.2, thereafter approached respondent No.3 (HDFC Bank Ltd.,) for opening Letter of Credit at the behest of respondent No.1 in favour of respondent No. 4. Accordingly, respondent No.3 (HDFC Bank) opened a Letter of Credit bearing No.046LC01113270001 for a sum of USD 1,80,000 dated 24.11.2011 in favour of respondent No.4.

[iii] Respondent No.4, thereafter on 30.11.2011, presented the documents for negotiations in terms of Letter of Credit to the petitioner. Since, the documents presented by respondent No.4 were complying presentation in terms of Letter of Credit, the petitioner negotiated the documents and paid a sum of USD 185,397.39 to respondent No.4 and on the same day, the above documents were forwarded by the petitioner to respondent No.3 (HDFC Bank) for acceptance.

[iv] That on 14.12.2011, respondent No.3, at the behest of respondent No.1 accepted the documents negotiated under Letter of Credit and conveyed its acceptance to petitioner vide Swift Message dated

14.12.2011 i.e. Annexure P-4. Further, the fact of acceptance of documents is admitted by respondent No.4 in paragraph No. 8 of the plaint (Annexure P-5) at page No. 34 of the paperbook.

[v] It is the admitted position between the parties that neither respondent No.3 nor respondent No.1 disputed the documents negotiated under the Letter of Credit. However, on account of non-shipment of goods, respondent No.1, at a later stage i.e. in the month of Feburary 2012 allegedly found that the documents negotiated under the Letter of Credit were forged and fabricated. Thereafter, Respondent No.1 filed civil suit No.29/2012 before the learned District Court, Jalandhar in the month of February 2012 for declaration and permanent injunction seeking order against defendant Nos.1 to 4 (respondent Nos.2 to 4 and the petitioner) against release of any amount under the Letter of Credit.

[vi] The learned trial Court vide its order dated 24.02.2012 restrained respondent Nos.2 and 3 from releasing any amount under the Letter of Credit in favour of respondent No.4 or the petitioner.

[vii] Thereafter, petitioner appeared and filed applications under Order 7 Rule 11 CPC for rejection of the plaint on account of non disclosure of any cause of action and under Order 39 Rule 4 CPC for vacation of ex parte stay granted vide order dated 24.02.2012 in favour of respondent No.1.

[viii] The learned trial court vide impugned order dated 25.02.2016 dismissed the application filed under Order 7 Rule 11 CPC on the ground that trial was yet to begin. The above impugned order is challenged by the petitioner before this Court by filing the Civil Revision. Since, the issue arising in the instant Civil Revision is

identical to the one in issue in CR No. 3679/2016, therefore, the instant Civil Revision is being taken up for decision along with CR No. 3679/2016 by a common order.

[3] Facts of CR No.4458 of 2016 in case titled as Malayan Banking Berhad v. GE Conductors Pvt. Ltd. and others) :-

[i] Brief facts of the case leading to the filing of the revision petition are that respondent No.1 (G.E. Conductors Pvt., Ltd) placed an order for purchase of copper rod from respondent No.3 (SIMS Copper). Pursuant to the inter se arrangement, respondent No.1 approached respondent No.2 (Oriental Bank of Commerce) for opening a Letter of Credit in favour of respondent No.3.

[ii] That on 09.11.2011, respondent No.2 at the instance of respondent No.1 opened Letter of Credit No.0886001620111 for a sum of USD 3,88,800 in favour of respondent No.3.

[iii] That on 14.11.2011, respondent No.3 presented documents for negotiation to the petitioner in terms of Letter of Credit. Since the same were complying presentation, the petitioner negotiated the documents and paid USD 3,96,567.90 (USD 1,98,143.82 + USD 1,98,424.08) to respondent No. 3 in two tranches. On the same day, the petitioner forwarded the documents to respondent No.2 for acceptance.

[iv] Respondent No.2 accepted the documents at the behest of respondent No.1 and conveyed its acceptance to the petitioner vide Swift Message dated 01.12.2011 for reimbursement of amount under Letter of Credit on maturity date i.e. 08.05.2012. Further, the fact of acceptance of documents is admitted by respondent No.1, which is

clean from perusal of paragraph No. 8 of the plaint i.e. (Annexure P4 at page No. 40).

[v] That on account of disputes and differences having arisen amongst respondent No.1 and respondent No.3, respondent No.1 filed civil suit No.34/2012 before the District Court, Jalandhar seeking declaration and permanent injunction for restraining respondent No.2 from making any payment under Letter of Credit in favour of respondent No.3 or the petitioner. The learned trial Court vide order dated 22.05.2012 granted ex parte injunction order against respondent No.2, thereby, restraining making any payment under Letter of Credit to respondent No.3 or the petitioner.

[vi] That the petitioner appeared and filed its written statement along with an application under Order 7 Rule 11 CPC for rejection of the plaint on the ground that no cause of action had arisen in favour of respondent No.1 for filing the suit.

[vii] Vide impugned order dated 25.02.2016 (Annexure P-10) the learned trial Court dismissed the application under Order 7 Rule 11 CPC on the ground that the trial of the civil suit was yet to begun.

[viii] The petitioner being aggrieved by the impugned order has filed civil revision petition which is being taken up for decision along with CR No.3679 of 2016 and CR No.3712 of 2016 as the issue in all the civil revisions is identical.

[4] It is the order dismissing the application under Order 7 Rule 11 CPC which has been challenged by the petitioner *inter alia* on the ground that the matter in issue with regard to claim for rejection of the plaint against respondent No.1 was squarely covered by a decision of Hon'ble the Supreme Court in the case of **Millenium Wires (P) Ltd. and others vs The**

State Trading Corporation of India Ltd. and others, 2015 (14) SCC 375 and despite the same having categorically been relied upon in the written submissions presented before the learned trial Court, no reference whatsoever had been made by the learned trial Court to the said decision of Hon'ble the Supreme Court in the impugned order. Secondly, that as per the decision of Hon'ble the Supreme Court in Millenium Wires's case (Supra), cause of action against the Negotiating Bank (i.e. petitioner herein) would deem to have arisen only if two situations existed namely that a fraud had been committed by the seller and said fraud was to the knowledge of the negotiating bank prior to the negotiation. For the purpose of decision reference is being made to the facts of CR No.3679 of 2016 in case titled as Malayan Banking Berhad vs Kay Vee Impex and others.

[5] Learned counsel for the petitioner contended that the plaint was absolutely silent with regard to averment of the petitioner-bank having knowledge of any fraud having been committed by the seller (i.e. respondent No.3). Learned counsel for the petitioner further referred to paragraph No.8 of the plaint wherein respondent No.1 took up the stand that believing the documents submitted by respondent No.3 to the petitioner to be genuine, respondent No.1 accepted the said documents pursuant to the transmission of the same by the petitioner to respondent No.2 thereby facilitating the release of price of the goods under the Letter of Credit issued by respondent No.2 in favour of respondent No.3 on the due date.

Learned counsel for the petitioner lastly contended that the finding in the impugned order with regard to fraud played by the defendants i.e. (petitioner and respondent No.3) in connivance with one another was contrary to the record as there was no allegation whatsoever in the plaint of fraud having been committed by respondent No.3 in connivance with the petitioner on respondent No.1.

[6] Per contra learned counsel for respondent No.1 contended that allegations of fraud were very much contained in the plaint as in paragraph No.10 of the plaint mention had been made of it having approached respondent No.2 not to make payment under the Letter of Credit issued by respondent No.2 because of an attempted fraud on the part of respondent No.3.

Learned counsel for respondent No.1 further contended that reference to the letter addressed to respondent No.2 is reference to letter dated 31.01.2011. The aforementioned letter is taken on record as 'Mark A'.

On query with regard to the date of issuance of letter dated 31.01.2011, learned counsel for respondent Nos.1 and 2 clarified that the same was a typographical error and in fact the same be read as 31.01.2012 and further that the said letter had been received by respondent No.2 as is evident from the stamp of receipt on the bottom of the letter on 17.02.2012. Contents of the said letter are reproduced as under:-

> ***"KAY VEE IMPEX***
>
> *Adm. Off: 15, Lajpat Nagar,*
> *Jalandhar - 144001*
> *Dated 31.01.2011*
>
> *Godown: D-118, Focal*
> *Point Extension,*
> *Jalandhar – 144004*
>
> *The Chief Manager,*
> *Oriental Bank of Commerce,*
> *Overseas Branch,*
> *Jalandhar*
>
> *Subject : Notice of Fraud – Cancellation/Revocation of Letter of Credit No.0886001490111, for USD 182103.92 to m/s. SIMS COPPER SDN BHD, MALAYSIA on account of 'fraud' by the overseas exporter.*

Dear Sir,

This is with reference to Letter of Credit Nos.0886001490111, for USD 182103.92 ('LC') issued by your Bank in favour of M/s SIMS COPPER SDN BHD (Beneficiary/Exporter) for the purposes of covering 100 percent of invoice costs of the shipment of Drawn Copper ('the goods') for our company. It is understood that the beneficiary has already submitted the Bill of Lading as proof of export of the said goods, for the purposes of encashing the said LC's.

This is to bring to your kind attention that the Exporter has played a 'fraud' upon the Importer and the Bank to the extent that it has completely forged the submitted BL to establish the fact of shipment whereas in reality no actual shipment has been done. It is vital to appreciate that the entire genesis of the transaction between the Parties is the actual shipment of goods towards which the monies shall be released by your Bank. However, if the actual shipment of goods is not effected by the Exporter and the documents are forged to prove the said export then it tantamount to total fraud in order to collect monies which is not otherwise due in absence of any shipment. The act of fraud by the Exporter is completely evident from the following two facts:-

1. The BL's are completely forged as no shipment corresponds to the details mentioned in the Bl. Furthermore, no actual shipment of goods has taken place in pursuance of the said BL's.

It is stated though the LC's issued by your bank are 'irrevocable' as per its terms however, it is well settled law that even an irrevocable LC can be revoked and payment can be stopped to the beneficiary on the ground of 'fraud'. In this regard reliance is placed on the decision of the Hon'ble Supreme Court in the case of *amongst others, U.P. Coop Federation Ltd. v. Singh Consultants and Engineers Pvt. Ltd. (1988) 1 SCC P74.*

Kindly, treat this letter as intimation of 'fraud' being played by the Exporter upon the Bank, the undersigned Importer and not release the payment to the beneficiary exporter. In absence of inaction on part of the Bank, the undersigned shall be compelled to approach the Court of Law for appropriate remedy.

Thanking You,
Sincerely Yours,
For KAY VEE IMPEX.
Sd/-
(PROP.)"

[7] A perusal of the contents of letter (Mark 'A') reproduced above reveals that although there is allegation of fraud by respondent No.3 yet no knowledge is attributed to the petitioner of the said fraud having been committed by respondent No.3 at any earlier point of time i.e. negotiation of documents by respondent No.3 with the petitioner. In fact the aforementioned communication categorically mentions that the communication be treated as intimation of fraud having been played by the exporter (respondent No.3) upon the Bank (respondent No.2) as well as respondent No.1, therefore, not to release the payment to respondent No.3 and further that in case of inaction on the part of the Bank (respondent No.2), respondent No.1 would be compelled to approach the Court of law for appropriate remedy. No arguments have been advanced by counsel for respondent-Banks (i.e. OBC as well as HDFC).

[8] At this stage, learned counsel for respondent No.1/plaintiff contended that if the impugned orders were to be reversed then the same be reversed only to the extent of the petitioner while granting liberty to

respondent No.1 to continue with the remedy as may be available to it against respondent No.3 in accordance with law.

[9] I have considered the submissions of learned counsel appearing for the parties.

[10] Identical situation as was in issue before the learned trial Court in the instant case was in issue in Millenium Wires's case (Supra) before the learned Single Judge of the Delhi High Court who rejected the plaint filed by the purchaser therein i.e. Millenium Wires (P) Ltd. and others as well as State Trading Corporation of India Ltd. and others under Order 7 Rule 11 CPC as not disclosing any cause of action. In said case, four Letters of Credit were opened at the instance of State Trading Corporation by the Allahabad Bank in favour of the sellers i.e. Synergic Companies at the behest of Millenium Wires (i.e. actual purchaser through State Trading Corporation (STC), the petitioner therein which was also Malayan Bank (i.e. the petitioner herein also) released payment to the Synergic Companies after the documents were presented for negotiation and it was at that stage that the purchaser therein i.e. Millenium Wires and STC approached Hon'ble the Delhi High Court by filing a suit seeking permanent, mandatory and perpetual injunction against Synergic Companies from claiming any benefit under the Letters of Credit in question and against the Confirming Foreign Bank i.e. Malayan Bank to prevent any action or release of funds under the Letters of Credit. Malayan Bank at that point of time filed an application under Order 7 Rule 11 CPC which as has been noted above was allowed by the learned Single Judge of Hon'ble the Delhi High Court and the plaint was rejected on the ground that there was no specific allegation against the Malayan Bank except a statement that the Bank seemed to be hand in glove with the Synergic Companies and secondly, that as per UCP-600 (Uniform

Customs and Practice for Documentary Credits, Sixth Edition) published by International Chambers of Commerce, the Bank (Issuing Bank) was bound to release the payment in terms of the Letter of Credit if compliant presentation was made by the beneficiary which in the said case was the Synergic Companies. The learned Single Judge of Hon'ble the Delhi High Court also relied on the established principle that the Court would not grant injunction against the issuing bank or the confirming bank except in two situations i.e. (a) there was fraud and the bank had knowledge of the fraud or (b) there would be irreparable injury caused to one of the parties if the injunction was not granted. The learned Single Judge held that the plaintiffs i.e. Millenium Wires (P) Ltd. etc. had made specific allegations only against Synergic Companies and no averment was contained in the plaint with respect to the knowledge of such fraud to the confirming bank, rather, it had been shown that there was no knowledge of fraud on the part of the confirming bank, therefore, the confirming bank cleared the payments to the Synergic Companies as per the provision of UCP-600. The learned Single Judge also referred to Clause 16 of UCP-600 to hold that in case the issuing Bank refused to honour the presentation of documents, it had to give a notice of such refusal to the confirming bank within 5 days of the presentation of the documents but the Allahabad Bank (i.e. the bank in Millenium Wires case) had approved the presentation of documents made by the Malayan Bank i.e. confirming bank for two of the four Letters of Credit and refused only one and even this refusal was communicated after 19 days i.e. time period prescribed by Clause 16 of UCP-600, therefore, the Malayan Bank was in its rights as well as duty to have made the payment to the Synergic Companies as per the Letter of Credit and UCP-600. The learned Single Judge also held that the remedies sought in the plaint i.e.

injunction against the Synergic Companies to claim any benefit under the Letters of Credit and against the Malayan Bank to advance any payment under Letters of Credit had already become infructuous as the Malayan Bank had made the payments to the Synergic Companies. The learned Single Judge also observed that the Letters of Credit were independent of the underlying contract between the applicant therein i.e. Malayan Bank and the beneficiary i.e. Synergic Companies and the Courts of law would not meddle with the dealings of the banks and grant injunction as a matter of course as it would affect the trustworthiness of these transactions and also the position of the banks in the market. Further, the Banks would not be asked to not comply with the Letter of Credit for some dispute between the parties. On the basis of the position as noted above, the learned Single Judge allowed the application under Order 7 Rule 11 CPC and dismissed the plaint as showing no cause of action against Malayan Bank while granting liberty to the plaintiff to pursue other appropriate remedies against the Synergic Companies i.e. seller. Appeal filed by Millenium Wires (P) Ltd as well as STC against the order of the learned Single Judge was dismissed by Hon'ble the Division Bench of the Delhi High Court on the same grounds on which the application had been allowed by the learned Single Judge.

Before Hon'ble the Supreme Court it was argued on behalf of Millenium Wires (P) Ltd and STC that in an application under Order 7 Rule 11 CPC, the Courts were required to look only into the averments contained in the plaint and it could not look into the written statement or any other evidence filed by the defendant. In respect of the aforementioned plea, Hon'ble the Supreme Court observed that there were two allegations in the plaint against the Malayan Bank which contained expression of mere apprehension of the plaintiffs that Negotiating Bank was in active collusion with the Synergic Companies and that no explanation or justification had been made in the plaint as to how this active collusion came about or what made the plaintiff suspect so. Hon'ble the Supreme Court was further pleased to observe that a comprehensive narration of facts that constituted cause of action had to be given in the plaint and that it was plain and clear that no cause of action whatsoever could be deduced against the Negotiating Bank from the extracts referred to from the plaint. Hon'ble the Supreme Court observed that it was not enough to allege fraud in such circumstances, but there must be clear evidence both as to the fact of fraud as well as to the bank's knowledge of such fraud and that injunctions against the negotiating banks for making payments to the beneficiary must be given cautiously as constant judicial interference in the normal practices of market could have disastrous consequences as affecting the trustworthiness of the Indian Banks and markets. Hon'ble the Supreme Court further observed that apparently the Malayan Bank had forwarded the documents presented by the Synergic Companies to the Allahabad Bank and out of four Letters of Credit, Allahabad Bank had accepted the presentation of documents in two Letters of Credit with the consultation of the STC and only one of the presentation was rejected while there was no information with respect to the response of the Allahabad Bank on presentation of documents of the fourth Letter of Credit and that even on the Letter of Credit for which the presentation was rejected, the response was made after 19 days while UCP-600 provided that rejection or any objection against the presentation must be communicated to the negotiating bank of the beneficiary within five days. In the circumstances, Hon'ble the Supreme Court dismissed both the appeals filed by Millenium Wires (P) Ltd as well as State Trading Corporation of India Ltd. while observing that if so advised the appellants could pursue their remedies against the seller i.e. Synergic Companies in an appropriate forum by instituting appropriate proceedings while making it clear that the opinion expressed by Hon'ble the Supreme Court in the judgment would not stand in the way of deciding such proceedings on merits.

[11] In the instant case, on receipt of documents from respondent No.3 seller, in accordance with the Letters of Credit and as are mentioned in Clause 46-A on page No.25 of the paper book as per UCP-600, the petitioner-Bank released the payment to respondent No.3 and on the same day forwarded the aforementioned documents to respondent No.2 which in consultation with respondent No.1 issued communication dated 31.10.2011 (Annexure P-3) to the petitioner at page No. 30 of the paper book that the message be treated as acceptance in the context of due date of LC No.0886001490111 being 16.04.2012 for US Dollars 182103.92.

[12] I have gone over the averments in the plaint with the assistance of learned counsel for respondent No.1 who has not been able to point out any allegation against the petitioner. The only allegation with regard to fraud is contained in the head note of the plaint and paragraph Nos.10 and 11. Relevant extract of the same is reproduced as under:-

> *"**Head Note:** Suit for declaration to the effect that the plaintiffs are not obliged to pay any amount to defendant No.2 in respect of invoices bearing Nos.SC110080/CUW dated 19.10.2011 for USD 182103.92 as the material covered by these invoices, had not been dispatched from Malaysia by defendant No.2 nor the same has been received on any port in India as all documents regarding the alleging shipping of the material mentioned in the above said invoice are forged and fabricated.*
>
> *AND*

> *For permanent injunction restraining defendant No.1 from paying any amount to defendant No.2 or to their bankers i.e. defendant No.3 under the letter of credit issued by defendant No.1 at the instance of the plaintiff bearing No.0886001490111 dated 17.10.2011.*
>
> *10. That the plaintiff then immediately approached defendant No.1 not to make any payment under the letter of credit issued by defendant No.1 because it was an attempted fraud on the part of defendant No.2. Copy of the letter addressed to defendant No.1 is attached herewith.*
>
> *11. That despite defendant No.1 (i.e. OBC) having been fully appraised about the attempted fraud being committed by defendant No.2 (i.e. SIMS COPPER) insisted upon making the payment to the bankers of defendant No.2 under the letter of credit issued by defendant No.1. Complete evidence regarding the fraud having been committed by defendant No.2 had been laid before defendant No.1, but for reasons undisclosed, defendant No.1 threatened to act against the interest of their own customers i.e. the plaintiff as well as against the economy of the country by releasing the payment to a foreign country which is not entitled to receive any amount because no material for which the payment is required to be made had ever been shipped from Malaysia.*

[13] A perusal thereof reveals that only general allegations of the documents regarding the alleged shipping of the material mentioned in this envoice to be forged and fabricated as also of the same being an attempt to commit fraud on the part of respondent No.3 and further of all material with regard to fraud having been placed by respondent No.1 before respondent

No.2 but respondent No.2 insisting on making the payment to the petitioner. On query, learned counsel for respondent No.1 clarified that the full material placed on record by respondent No.1 before respondent No.2 was on the basis of communication Mark-A dated 31.01.2012 addressed by respondent No.1 to respondent No.2 and that the said communication had been received by respondent No.2 on 17.02.2012, whereas the acceptance was communicated by respondent No.2 to the petitioner way back on 31.10.2011 (Annexure P-3). Besides, even the communication or the material referred to by respondent No.1 i.e. Mark A does not disclose any allegation of fraud qua the petitioner or of the petitioner being aware of the fraud committed by respondent No.3 at any earlier point of time i.e. at the time of negotiation of documents on 20.10.2011.

Compliant presentation having been made by the beneficiary in the instant case i.e. respondent No.3 to the petitioner, the petitioner as per UCP 600 (i.e. Uniform Customs and Practice for Documentary Credits, Sixth Edition) published by International Chambers of Commerce was bound to release the payment in terms of the Letters of Credit especially since there was firstly acceptance communicated by the Issuing Bank i.e. respondent No.2 to the petitioner vide Annexure P-3 and at that point of time, there was no allegation of fraud having been raised by respondent No.1 nor was the petitioner-Bank having any knowledge of the fraud if any committed by respondent No.3 with respondent No.1. Respondent No.1 had not made any averment with respect to the knowledge of such fraud being to the notice of the petitioner-Bank. In fact, perusal of paragraph No.8 of the plaint reveals that believing the documents to be genuine, respondent No.1/plaintiff had accepted the said documents thereby facilitating the release of the price of the goods under the Letter of Credit issued by respondent No.2 in favour of respondent No.3 on the due date.

[14] It was not a case that in accordance with Clause 16 of UCP-600 respondent No.2 i.e. Issuing Bank had refused to honour the presentation of documents and thereby given notice of such refusal to the Confirming Bank i.e. petitioner within five days of the presentation of the documents i.e. five days from 20.10.2011. Except for the acceptance communicated by respondent No.2 to the petitioner vide Swift Message dated 31.10.2011, there is no other communication from respondent No.2 to the petitioner till the filing of the suit in the year 2012. Thus, in the circumstances, the petitioner-Bank made the payment to the respondent No.3 as per Letter of Credit and UCP 600. In the absence of there being any averment in the plaint disclosing any cause of action at the hands of respondent No.1 against the petitioner, the impugned order is legally unsustainable.

[15] Accordingly, in the light of the position as noted above, the impugned order dated 25.2.2016 (which is common in all the three cases) is set aside, application under Order 7 Rule 11 read with Section 151 CPC is allowed and the plaint filed by respondent No.1 is rejected as not disclosing any cause of action against the petitioner herein. However, in accordance with the decision in Millenium Wire's case (Supra) it would be open to respondent No.1 to pursue its remedies against respondent No.3 in an appropriate forum by instituting appropriate proceedings if so advised.

Needless to mention, opinion expressed in this order shall not stand in the way of deciding such proceedings in accordance with merit as per law.

Needless to mention in case any such proceedings are taken out by respondent No.1 against respondent No.3 in an appropriate forum by instituting appropriate proceedings if so advised, respondent No.1 would be entitled to avail of the protection of Section 14 of the Limitation Act, 1963 in accordance with law.

[16] Accordingly, all Revision petitions (i.e. CR No.3679 of 2016, CR No. 3712 of 2016 and CR No.4458 of 2016) are allowed in the aforementioned terms vide this common order.

(B.S. Walia)
Judge

27.11.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reasonable : Yes/No.