

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Judgment Reserved on : 13.03.2019

Judgment Delivered on : 27.03.2019

CORAM:

THE HONOURABLE MR.JUSTICE R.SUBBIAH
AND
THE HONOURABLE MR.JUSTICE KRISHNAN RAMASAMY

O.S.A.No.274 of 2018
and
C.M.P.No.12568 of 2018

Indus Ind Bank,
represented by its Manager,
No.3, Village Road,
Nungambakkam,
Chennai-600 034. ... Appellant

Vs.

1. Mr.Sivakumar, S/o Boologapandian,
Proprietor,
Mutharamman and Co.,
A Proprietor concern,
54, G.V.T.Complex,
Varadarajapuram,
Nasrethpuram,
Chennai-602 103.

2. Surya Imports and Exports,
Represented by its Proprietor,
Mr.N.Surya Srinivas,
S/o Bhaskara Rao,
Flat No.15, Rams Flats, 2nd Floor,
New No.5, Old No.2-A,
Madhavan Nair Road,
Mahalingapuram,
Chennai-600 034.

3. Indian Bank,
Represented by its Assistant Regional Manager,
W-100, II Avenue,
Anna Nagar, Chennai-600 040.

.. Respondents

Original Side Appeal filed under Order XXXVI Rule 9 of the
Original Side Rules of this Court and Clause 15 of the Letters
Patent, against the fair and decretal order dated 23.03.2018

passed by the learned Single Judge in Application No.1780 of 2018 in C.S.No.69 of 2018 on the file of this Court.

For appellants : Mr.E.Om Prakash, Senior Counsel
for M/s.Ramalingam & Associates

For respondents : Mr.V.Lakshmi Narayanan for
Mr.Sharath Chandran for R-1
Mr.J.Manikandan for R-2
Mr.Kalyana Raman for M/s.Aiyar & Dolia for R-3

JUDGMENT

R.SUBBIAH, J

This Original Side Appeal (O.S.A) has been filed against the fair and decretal order dated 23.03.2018 passed by the learned Single Judge in Application No.1780 of 2018 in C.S.No.69 of 2018 on the file of this Court.

2. The appellant-Bank, namely Indus Ind Bank is the second defendant in the suit. The first respondent herein is the plaintiff in the suit. The second respondent-Proprietorship Firm, namely M/s.Surya Imports and Exports, is the first defendant and the third respondent-Indian Bank is the third defendant in the suit. For the sake of convenience, the parties are herein referred to as they are ranked in the suit as plaintiff and defendants.

3. The said application in A.No.1780 of 2018 was filed to pass interim judgment and decree directing the first and second defendants to pay the admitted sum of Rs.58,73,555/- as per the SFMS message sent by the second defendant-Indus Ind Bank to the third defendant-Indian Bank on 17.06.2017 together with interest at 18% per annum from the date of plaint till the date of realisation. The said application was allowed, against which, the present O.S.A. is filed by the second defendant.

4. The case of the plaintiff is as follows:

(a) The plaintiff is a Proprietor engaged in the business of selling construction material including ferrous and non-ferrous metal products, wood scrap, rubber waste, etc. The first defendant-Proprietorship Firm had approached the plaintiff and requested for supply of TMT (Thermo Mechanically Treated) bars, which have anti-corrosive properties and are commonly used in civil constructions across the country. On the request of the first defendant-Proprietorship Firm, the plaintiff had been supplying TMT bars from time to time and receiving payments for the same.

(b) The first defendant-Proprietorship Firm had approached the plaintiff and requested for supply of 2,58,760 Kgs. of TMT bars. The plaintiff, vide a pro-forma invoice, dated 29.05.2017, offered to supply the same at Rs.38.20 per Kg. The total value

of this consignment was Rs.1,03,78,863. The first defendant-Proprietorship Firm had accepted the offer made by the plaintiff, vide a purchase order (PO.No.007a-5/170530/008/170529/SK-DIR/TMT), dated 30.05.2017. The purchase order dated 30.05.2017 expressly mandated that the payment of this consignment was to be made on a Bill of Exchange payable 90 days after the date of acceptance (at sight) by the first defendant's banker, i.e. the appellant-second defendant-Indus Ind Bank. Pursuant to this arrangement, the goods were dispatched and delivered to the first defendant-Proprietorship Firm, vide invoice Nos.218 to 233, dated 27.06.2017, for a sum of Rs.1,03,78,863/-.

(c) In accordance with the terms of the purchase order, the plaintiff had drawn a Bill of Exchange for a sum of Rs.1,03,78,863/- payable by the drawee, the first defendant. The consideration of the Bill of Exchange was the sale price of Rs.1,03,78,863/- payable by the first defendant to the plaintiff for the goods sold and delivered under the said purchase order. The Bill of Exchange, dated 27.06.2017 was accepted for payment by the first defendant and its banker, the second defendant (appellant herein). The plaintiff had discounted the Bill of Exchange, dated 27.06.2017 with his banker, the third defendant. The third defendant, vide a collection bill, dated 01.07.2017 bearing Ref.No.00588170C0000014, had requested the second defendant to convey its acceptance through SFMS (Structured Financial Messaging System) and requested payment on the Bill of Exchange upon its maturity. The second defendant, vide SFMS message, dated 04.07.2017, accepted the Bill of Exchange under a Letter of Credit and replied with the following message:

"We shall remit proceeds on due date
I.E. 03.10.2017 of under LC
No.IBC0007170007260"

A perusal of this SFMS message would show that the second defendant had made a deferred payment undertaking to the third defendant under a Letter of Credit, which is evidenced by "IFN 754" message, which is a message sent by the paying/accepting bank unconditionally undertaking to make payment. The fact that this was done on the strength of a Letter of Credit in favour of the first defendant, is also clear from a reading of the same message.

(d) The first defendant-Proprietorship Firm had placed another order with the plaintiff for 1,38,900 Kgs. of TMT bars. The plaintiff had dispatched the same at the rate of Rs.38.20 per Kg. to the first defendant-Proprietorship Firm, pursuant to a purchase order dated 10.06.2017 and bearing the description PO No.009-6/170610/06-007/D-SIV/TMT for a total value of Rs.55,71,279. The payment was to be made 90 days from the date of acceptance by the second defendant. Pursuant to the above, the goods were delivered to the first defendant. The plaintiff

had drawn up a Bill of Exchange as required under the purchase order, dated 12.06.2017 for a sum of Rs.55,71,279/-. The Bill of Exchange was accepted for payment by the first defendant-Proprietorship Firm and its banker, the second defendant (appellant herein). The third defendant, vide a collection bill in No.00588170C0000014, had presented the documents for collection with the second defendant. The second defendant, vide SFMS message, dated 17.06.2017, acknowledged the acceptance and unconditionally undertook to make payment by way of the following message:

"Payment will be effected on due date
I.E. 09 SEP 2017 of our Bill
No.IBC0007170006482".

(e) After having undertaken to make payment, the plaintiff was shocked and surprised to learn from their Banker, viz., third defendant/third respondent herein (Indian Bank), that the appellant-second defendant-Indus Ind Bank had refused to honour the Bill of Exchange on the false pretext that the goods had been returned by the buyer-first defendant on account of quality issues. This came as a rude shock to the plaintiff, since the buyer-first defendant had not raised any such issues at any point of time. As a matter of fact, the plaintiff is in possession of the records to show that the buyer-first defendant had taken delivery of the goods and sold the same to third parties. The third defendant-Indian Bank forwarded the communications sent by the second defendant-Indus Ind Bank, dated 23.10.2017 and 26.10.2017 fraudulently refusing payment on the ground that the goods had been returned for quality issues.

(f) The plaintiff was also shocked to learn from the third defendant-Indian Bank that nearly 70 days after taking delivery of the TMT bars and undertaking to make payment, the first defendant-Proprietorship Firm, by colluding with the appellant-second defendant-Indus Ind Bank, refused to transfer the sums of Rs.55,88,585/- and Rs.1,03,78,868/- due and payable under the two collection bills referred to above. The second defendant-Indus Ind Bank had callously and deliberately refused to honour the aforesaid amounts, even though the payment was guaranteed under the Letters of Credit. There is not a single communication prior to 03.01.2018 to show that the first defendant had raised any issue regarding the quality of goods. The deployment of the surreptitious method to avoid payment of the above amounts, which are legitimately due and payable to the plaintiff, reflects the intention of the first defendant to cheat and defraud the plaintiff by unlawfully abstaining from making payments that are due to the plaintiff. The appellant-second defendant-Indus Ind Bank had merely joined this conspiracy by failing to honour the sums due against the Letters of Credit by falsely alleging return of goods as the reason for refusing repayment. The appellant-second defendant-Indus Ind Bank is

equally under a legal obligation to honour the bills presented and accepted by it, especially, since the drawee-first defendant had expressly acknowledged the receipt of the goods and had undertaken to make payments through the second defendant-Indus Ind Bank. Hence, the plaintiff has filed the suit for the following reliefs:

(i) to direct the first and second defendants to jointly and severally pay the plaintiff a sum of Rs.58,73,555/- together with interest at 18% per annum from the date of plaint till the date of realisation;

(ii) to direct the second defendant, by way of a decree of mandatory injunction, to pay the admitted sum of Rs.1,03,78,863/- together with interest at 18% till the date of repayment, to the third defendant under the collection bill in No.0058817OC0000014, which was accepted for payment by the second defendant, vide its SFMS advice, dated 04.07.2017; and

(iii) to award costs of the suit.

5. Pending suit, first respondent-plaintiff has taken out the said application in A.No.1780 of 2018 in C.S.No.69 of 2018 with the prayer referred to supra. Before the learned Single Judge, there was no representation for the first and second defendants. The learned Single Judge, on merits, and also by relying upon the documents, particularly, the message dated 17.06.2017, has come to the conclusion and held as follows:

"5. This Court has sufficient reasons to suspect the bona fide of the first defendant. It is also to be noted that though notices were served to the second defendant, they did not choose to appear, rather their absence was significant and noted. Finally, when notice was directed to the Manager, he appeared in person.

6. It is seen that even today for vakalat on behalf of the second defendant had not been regularised. It is also seen that the plaintiff had drawn up a bill of exchange as required under the purchase order dated 12.06.2017 for a sum of Rs.55,71,279/-. The bill of exchange was accepted for payment by the first defendant and his banker the second defendant. The third defendant, by a collection bill, had presented the documents for collection with the second defendant. The second defendant by SFMS message dated 17.06.2017 acknowledged acceptance and unconditionally undertook to make the payment by way of the following message:-

"Payment will be effected on due date I.E. 09 SEP 2017 OF OUR BILL

No.IBC0007170006482"

7. In view of the fact that the first and second defendants have deliberately abstained from participating in the Court proceedings and have not come forward to enable the Court to come to a just conclusion and have not produced documents as directed, there will be an order as prayed for in A.No.1780 of 2018 and this Application is allowed... .."

Aggrieved by the above order passed by the learned Single Judge, the second defendant has preferred the above O.S.A.

6. Learned Senior Counsel appearing for the appellant-second defendant -Indus Ind Bank submitted that the first respondent-plaintiff filed the suit for recovery of Rs.58,73,555/- under one transaction from the first and second defendants and a sum of Rs.1,03,78,863/- under another transaction from the second defendant-Indus Ind Bank. The first respondent-plaintiff, who is the Proprietor of M/s.Mutharamman and Co., as seller and the second respondent-first defendant-Proprietorship Firm as purchaser, have entered into a sale transaction. For the convenient business process, the first and second respondents have utilised the "Document Collection" mode for payment arising in the sale transaction. The "Document Collection" is the payment mode in which the seller hands over the documents of title in respect of the goods to the seller's Banker, namely the third respondent/Indian Bank, which in turn forwards the same to the buyer's Banker, namely the appellant herein (Indus Ind Bank). The buyer's Banker, then, without any liability of the payment, handles the document and delivers it to the buyer, namely the second respondent herein, as per the delivery terms specified by the seller's Banker. Such practice is undertaken by the Bankers in terms of the Uniform Rules of Collection (URC) framed by the International Chamber of Commerce (ICC) and binding on all member countries.

7. Learned Senior Counsel appearing for the appellant-second defendant-Indus Ind Bank further submitted that in the instant case, the first respondent-plaintiff issued a Proforma Invoice to the second respondent-first defendant-Proprietorship Firm for supply of 1,38,900 Kgs. of TMT bars on 09.06.2017. The second respondent-first defendant-Proprietorship Firm, in response to the Proforma Invoice, issued purchase confirmation/order to the first respondent-plaintiff on 10.06.2017. Further, on 12.06.2017, the first respondent-plaintiff raised a Bill of Exchange for a sum of Rs.55,71,279/- on the second respondent-first defendant-Proprietorship Firm, payable to the plaintiff's Banker, the third respondent-Indian

Bank and on 12.06.2017, the first respondent-plaintiff submitted the documents with the Bill of Exchange to his Banker, namely the third respondent-third defendant-Indian Bank, for onward submission to the appellant-second defendant-Indus Ind Bank, being the banker of the second respondent-first defendant-Proprietorship Firm. On 13.06.2017, the third respondent-Indian Bank issued a Collection Schedule and forwarded the documents to the appellant-Indus Ind Bank to deliver the same to the second respondent-Proprietorship Firm upon their acceptance of the Bill of Exchange for the sum of Rs.55,71,279/-. Further, on 17.06.2017, the appellant-Indus Ind Bank issued SFMS message to the third respondent-Indian Bank informing the performance of obligations and conveying the acceptance of the Bill of Exchange and payment on the due date by the second respondent-first defendant-Proprietorship Firm. On 23.10.2017, the appellant-Indus Ind Bank had sent a letter to the third respondent-Indian Bank reporting that the payment is not made by the second respondent-first defendant-Proprietorship Firm in terms of acceptance on the ground that the goods were defective and have been returned by the second respondent-first defendant-Proprietorship Firm. On 04.12.2017, the third respondent-Indian Bank, had in turn informed the non-payment to the first respondent-plaintiff by their letter, wherein it is seen that the Bills were discounted and therefore, the third respondent-Indian Bank sought to recover the same from the first respondent-plaintiff. On 15.12.2017, the third respondent/Banker (Indian Bank) sent a letter to the appellant/Banker (Indus Ind Bank) seeking for payment, wherein they have categorically admitted that the Bills were sent for collection and the appellant-Indus Ind Bank sent acceptance by SFMS to them in IFN 754 and that they have sent various reminders. Moreover, on 11.01.2018, the first respondent-plaintiff, alleging non-payment by the appellant-second defendant-Indus Ind Bank and the second respondent-first defendant-Proprietorship Firm, filed the present suit.

8. It is the main contention of the learned Senior Counsel appearing for the appellant-second defendant-Indus Ind Bank that in the instant case, the Bill of Exchange is not supported by Letter of Credit. In case where Letter of Credit is issued, it should have been advised to the beneficiary (i.e. Mutharamman and Co.) by the advising Bank (Indian Bank). In the present case, no acknowledgement is sent by the Indian Bank (third respondent-third defendant) to the Indus Ind Bank (appellant-second defendant) regarding any receipt of Letter of Credit. The parties were much aware that the Bills were under collection and not under the Letter of Credit before the transportation of goods. All the communications in this regard were made by the third respondent-Indian Bank referring the transaction under dispute as "Documentary Collection" only and not "Letter of Credit". The role of the appellant-second defendant-Indus Ind

Bank under the said transaction is only to handle the documents under collection basis without any risk or liability. The subject transaction was executed under "Documentary Collection" basis, which is evidenced by the very document forwarded by the third respondent-Indian Bank with the nomenclature as that of "Collection Schedule". In the present case, in respect of the subject matter of transaction under appeal, the second respondent-first defendant-Proprietorship Firm has not provided the authorisation to the appellant-second defendant-Indus Ind Bank to make the payment. Therefore, the payment could not be effected. Hence, the application seeking for interim decree is not based on any document of clear admission of the alleged due amount and it is only based on the SFMS, which would not amount to any admission of fact. Thus, in the subject matter, there cannot be any decree on the alleged admission. Hence, the order passed by the learned Single Judge is liable to be set aside. In support of his submissions, learned Senior Counsel appearing for the appellant relied on the following judgments of the Supreme Court:

- (i) 2000 (7) SCC 120 (Uttam Singh Duggal & Co. Ltd. Vs. United Bank of India);
- (ii) 2010 (6) SCC 601 (Jeevan Diesels & Electricals Ltd. Vs. Jasbir Singh Chadha); and
- (iii) 2011 (15) SCC 273 (Himani Alloys Limited Vs. Tata Steel Ltd.).

9. Countering the above submissions, learned counsel for the first respondent-plaintiff submitted that there is a clear case of fraud and collusion between the appellant-Indus Ind Bank and the second respondent-buyer (first defendant-Proprietorship Firm) to deprive the dues lawfully payable to the first respondent-plaintiff. In this regard, learned counsel for the first respondent-plaintiff submitted that the records reveal that in one account alone, i.e. A/c.No.259042994999, the appellant-second defendant-Indus Ind Bank had permitted the second respondent-first defendant-Proprietorship Firm to withdraw approximately Rs.1 crore and 30 lakhs and that too, after passing of the interim decree by the learned Single Judge on 23.03.2018. The appellant-second defendant-Indus Ind Bank was fully aware that the present appeal has been filed by it questioning its liability under Bill No.13 stating that the second respondent-first defendant-Proprietorship Firm, the buyer, has instructed them to return the goods as they are defective. The appellant-Indus Ind Bank is trying to avoid its liability under the Bill by contending that it is only a Collection Agent and that the transaction is not backed by Letter of Credit. In this regard, learned counsel for the first respondent-plaintiff submitted that Bill No.13 was negotiated by the third respondent/Indian Bank with the appellant/Indus Ind

Bank on 13.06.2017 and in the settlement instructions, the Indian Bank has specifically stated that the acceptance of payment under the Bill had to be made through SFMS. The SFMS system is the only permitted mode of accepting the Letter of Credit and the Bank Guarantee instruments, based on the RBI Circular issued in 2012, which has been issued by the Ministry of Finance, Government of India and the Banks are duty bound to take note of the same. The appellant/Indus Ind Bank has followed the circular and accepted the Bill on 17.06.2017 and sent SFMS message with "IFN 754" Code, stating that the payment will be effected on due date, i.e. 09.09.2017. IFN 754 message code is an inter-Bank message used to relay advice of payment/acceptance/negotiation of Bills of Exchange covered by Letter of Credit. The message is sent by the accepting Bank to the issuing Bank. Furthermore, all messages relating to the Letters of Credit and guarantee transactions are grouped under Category-7 of IFN.

10. Learned counsel for the first respondent-plaintiff further submitted that in the present case, the appellant-second defendant-Indus Ind Bank claims that the reference to the word "LC" in the acceptance message dated 17.06.2017, refers to "Local Collection" and not "Letters of Credit". According to the learned counsel for the first respondent-plaintiff, the above interpretation is misconceived and would amount to re-writing the IFN Code. He further contended that the appellant/Indus Ind Bank is fully aware of the above position and is now deliberately attempting to wriggle out of its liability by making a fictitious claim before this Court. In fact, the very same Indus Ind Bank had honoured the earlier Bill Nos.002, 004, 005, 009, 006, 007, 008 by issuing the very same IFN 754 message to the Indian Bank. The payments are made to the third respondent-Indian Bank by the appellant-Indus Ind Bank and not through the second respondent-first defendant-Proprietorship Firm. If the appellant-second defendant-Indus Ind Bank was only a Collection Agent, the question of the Bank directly making payment to third respondent-Indian Bank under the earlier Bills, could never arise. Thus, learned counsel for the first respondent-plaintiff submitted that this is a case of clear admission of payment to the plaintiff and sought for dismissal of the appeal. In support of his submissions, the learned counsel for the first respondent-plaintiff relied upon the judgments:

(i) 2015 (4) SCC 228 (National Bank Ltd. Vs. Ghanshyam Das Agarwal);

(ii) 1989 (1) LW 320 (Madras High Court) (Revathi Equipments Vs. Sangeetha Tubewell Corporation), and

(iii) 2009 SCC Online Bom. 613 = 2009 (5) Mah.L.J 318 = 2011 (1) Arb.L.R. 140 (Bombay High Court) (Indian Bank Vs. Kapol Co-op. Bank Ltd).

11. Learned counsel for the second respondent-first defendant-Proprietorship Firm submitted that the first respondent-plaintiff accepted to supply the TMT bars and the purchase order was dated 30.05.2017. The consignment was to be made on a Bill of Exchange after date of acceptance by the second respondent's Banker, namely the appellant herein (Indus Ind Bank). Another purchase order was also made on 10.06.2017. To the shock and surprise, the second respondent-first defendant-Proprietorship Firm found that the first respondent-plaintiff had cheated the second respondent-Proprietorship Firm by sending defective goods, and hence, after thorough inspection of the goods received, they had no other option but to return back the entire consignment to the first respondent-plaintiff. The appellant-Indus Ind Bank and the third respondent-Indian Bank are making false allegations calling upon the second respondent-first defendant-Proprietorship Firm and the appellant-second defendant-Indus Ind Bank to honour the Letters of Credit, dated 27.06.2017 and 17.07.2017 by effecting credit for a sum of Rs.55,88,585/- and Rs.1,03,78,868/- by completely suppressing the fact that the goods were all returned due to sub-standard quality. The materials supplied by the plaintiff were not of standard quality and it forced the second respondent-first defendant-Proprietorship Firm to return the same to the first respondent-plaintiff, which is referred to in the letters, dated 12.07.2017 and 13.07.2017. When the goods or materials alleged to have been supplied by the first respondent-plaintiff to the second respondent-first defendant-Proprietorship Firm, were in fact returned to the first respondent-plaintiff, the question of making payments to the first respondent-plaintiff by the second respondent-first defendant-Proprietorship Firm or the appellant-second defendant-Indus Ind Bank or the third respondent-Indian Bank, does not arise. The first respondent-plaintiff cannot try to make unjust enrichment at the expense of the second respondent-first defendant-Proprietorship Firm. The allegation of the first respondent-plaintiff that the second respondent-first defendant-Proprietorship Firm has sold the goods to third parties, is baseless, as the first respondent-plaintiff has not produced any reliable material to substantiate the same. There is no arbitrary action of the second respondent-first defendant-Proprietorship Firm and there is no conspiracy of any kind as alleged between the second respondent-first defendant-Proprietorship Firm and the appellant-second defendant-Indus Ind Bank.

12. Learned counsel for the second respondent-first defendant-Proprietorship Firm further submitted that it is alleged in the plaint by the first respondent-plaintiff that the second respondent-first defendant-Proprietorship Firm has caused return of nearly Rs.9 crores worth of goods on the

very same ground that the goods were defective, which would prove that the first respondent-plaintiff is in the habit of despatching the defective goods, and this is the 'modus-operandi' of the first respondent-plaintiff by trying to make unjust enrichment by supplying defective goods. Learned counsel for the second respondent-Proprietorship Firm further contended that the mere fact that the Bill of Exchange was accepted, does not automatically make the second respondent-first defendant-Proprietorship Firm liable for payment, since the subsequent events prove that the goods were returned to the first respondent-plaintiff and hence, the first respondent-plaintiff, cannot, by any stretch of imagination, demand payments alleging obligation to pay. It is futile on the part of the first respondent-plaintiff to allege that there exists no evidence to show that the goods were returned, since it has been clearly brought out in the second respondent's letters dated 12.07.2017 and 13.07.2017, which had also been acknowledged by the first respondent-plaintiff and having acknowledged the same, it is not proper on the part of the first respondent-plaintiff to allege that there was no proof for return of the goods. Further, after acceptance of the Bill of Exchange for payment by the second respondent-first defendant-Proprietorship Firm, the second respondent had sent a message to the appellant-second defendant-Indus Ind Bank for payment of the amount to the first respondent-plaintiff, but after coming to know of the ill-quality of the goods, the second respondent-first defendant-Proprietorship Firm immediately intimated the appellant-second defendant-Indus Ind Bank not to make payment in respect of the goods, and accordingly, the appellant-Indus Ind Bank had not made any payment. Since the second respondent-first defendant-Proprietorship Firm had informed the appellant-second defendant-Indus Ind Bank for stopping the payment and returned the goods, the second respondent is not liable for making any payment to the first respondent-plaintiff.

13. Learned counsel for the third respondent-Indian Bank submitted that the first respondent-plaintiff had business transactions with the second respondent-first defendant-Proprietorship Firm and during the course of business, the second respondent-first defendant-Proprietorship Firm placed orders with the first respondent-plaintiff for purchase of TMT bars. Various purchase orders were placed by the second respondent-first defendant-Proprietorship Firm with the first respondent-plaintiff for supply of TMT bars from February 2017. In respect of the same, the first respondent-plaintiff opened Bills of Exchange for various invoices on the second respondent-first defendant-Proprietorship Firm. The first respondent-plaintiff requested the third respondent-Indian Bank to process the Bills of Exchange as per the purchase orders and also get them discounted. It was agreed between the first respondent-plaintiff and the second respondent-first defendant-

Proprietorship Firm that the appellant-second defendant-Indus Ind Bank would remit the payment to the third respondent-Indian Bank under the invoices on the respective due dates to the third respondent-Indian Bank. On this basis, the third respondent-Indian Bank would send Collection Schedule to the appellant-Indus Ind Bank for collection. The abovesaid procedure was followed in respect of the Bills for supply of TMT bars and payments were made in respect thereof for 10 Bills. The Bill discounting facility is extended to the customer, namely the first respondent-plaintiff, so as to bring down the credit period and to utilise the funds for his business purpose.

14. It is the further submission of the learned counsel for the third respondent-Indian Bank that the dispute arose between the first respondent-plaintiff and the second respondent-first defendant-Proprietorship Firm with regard to the quality of goods supplied. The said fact came to the knowledge of the third respondent-Indian Bank after 120 days from the date of sending the Collection Schedule pertaining to Bill Nos.00588170C0000013 and 00588170C0000014. With respect to Bill No.00588170C0000013, the Collection Schedule was sent to the second respondent-first defendant-Proprietorship Firm on 13.06.2017 after discounting the Bill. On receipt thereof, on 17.06.2017, the appellant-second defendant-Indus Ind Bank assured payment in respect of the said Bill by issuing IFN 754 falling under Documentary Credits and Guarantees for Standards pertaining to the advise of payment/acceptance/negotiation, as it is the standard practice. The message is sent by the paying, accepting or negotiating Bank or the Bank incurring a deferred payment undertaking to the issuing Bank. In effect, by issuing a message under the abovesaid category, the paying Bank, namely the appellant-Indus Ind Bank, undertook to make over the payment to the third respondent-Indian bank, namely, the seller Bank, in respect of the goods supplied by the first respondent-plaintiff, to the second respondent-buyer, i.e. the first defendant-Proprietorship Firm is independent of the facility of the Bills of Exchange accepted by the appellant-Indus Ind Bank.

15. Learned counsel for the third respondent-Indian Bank further contended that insofar as Bill No.00588170C0000014 is concerned, the Collection Schedule was sent by the third respondent-Indian Bank to the appellant-Indus Ind Bank on 01.07.2017 and on receipt thereof, the appellant-Indus Ind Bank issued IFN 754 on 04.07.2017. The Bills of Exchange in respect of Invoice Nos.165 to 171 were discounted by the third respondent-Indian Bank on 27.06.2017 and the appellant-Indus Ind Bank undertook to make payment by 09.09.2017. Likewise, in respect of the goods supplied under Invoice Nos.218 to 233, the Bills were discounted on 17.07.2017 and the appellant-second defendant-Indus Ind Bank agreed to make the payment in respect thereof by 03.10.2017. At the behest of the second respondent-first defendant-Proprietorship Firm, the appellant-second

defendant-Indus Ind Bank did not make any payment to the third respondent-Indian Bank. In this regard, the third respondent-Indian Bank sent several letters and reminders to the appellant-Indus Ind Bank to make over the payments in respect of the Bills referred to above. The payment under Bill No.0058817OC0000013 became due on 09.09.2017 and payment under Bill No.0058817OC0000014 became due on 03.10.2017. As per the norms stipulated by the Reserve Bank of India, if the borrower does not make any repayment for a period of three months from the due date, the account is classified as Non-Performing Asset (NPA). In the instant case, the Bill discounting facility account was debited on 27.06.2017 and 17.07.2017 and the OCC account were funded on the same date. The due date fell on 09.09.2017 and 03.10.2017. The first respondent/plaintiff requested for ad-hoc facilities to clear the outstanding amounts payable in respect of Bill Nos.0058817OC0000013 and 0058817OC0000014 and the same were duly processed.

16. Learned counsel for the third respondent-Indian Bank also contended that insofar as Bill Nos.0058817OC0000013 and 0058817OC0000014 are concerned, no payment was made by the appellant-Indus Ind Bank and in that behalf, mails were sent to the appellant on 18.12.2017, 20.12.2017, 28.12.2017, 03.01.2018 and 20.01.2018. The appellant-Indus Ind Bank gave commitment in IFN 754 to make the payment on the due dates of the respective Bills, namely on 09.09.2017 and 03.10.2017. While acknowledging the mail dated 20.12.2017, the appellant-Indus Ind Bank sent a reply requesting to allow some time to revert on the matter. However, the appellant-Indus Ind Bank neither reverted back nor made payments to the third respondent-Indian Bank. The appellant-Indus Ind Bank, instead of honouring its commitment, returned the Bill in question alleging quality dispute belatedly. Since no payment was forthcoming to the third respondent-Indian Bank after discounting of the Bill, on 24.01.2018, the third respondent-Indian Bank addressed a letter to the first respondent-plaintiff calling upon it to make the payment and close the Bill. The amount payable under Bill No.058817OC0000014 was adjusted and the same was closed from the ad-hoc facilities. This was done with the consent of the first respondent-plaintiff in order to prevent the account from being classified as NPA.

17. It is further submitted by the learned counsel for the third respondent-Indian Bank that the allegation of the appellant-Indus Ind Bank that payment was to be made by it to the third respondent through Documentary Collection method and that there is no Letter of Credit or Guarantee issued by the buyer's Banker, viz., the appellant-Indus Ind Bank, to the seller's Banker, viz., the third respondent-Indian Bank, and this allegation is untenable and misleading. It is further stated by the learned counsel for the third respondent-Indian Bank that the payments were made by the appellant-Indus Ind Bank

to the third respondent-Indian Bank by issuing IFN message and therefore, the stand taken by the appellant-Indus Ind Bank that the payment was made through Documentary Collection method is misconceived. In this regard, learned counsel for the third respondent-Indian Bank invited the attention of this Court to Circular, dated 17.07.2012 issued by the Ministry of Finance, Department of Financial Services, for sending the message through SFMS system as mandatory for sending and receiving Letter of Credit and Bank Guarantee instruments. In fact, the payments in respect of the previous Bills relating to the transactions, were made by the appellant-Indus Ind Bank to the third respondent-Indian Bank by using SFMS system of sending message. Therefore, the appellant-Indus Ind Bank cannot be heard to say that the payment was to be made only through Documentary Collection method and not through Letter of Credit. For these reasons, learned counsel for the third respondent-Indian Bank prayed for dismissal of the appeal.

18. Keeping in mind the above submissions made by the learned counsel for the parties, we have carefully considered the same and perused the materials available on record.

19. Though very many contentions have been raised by the learned counsel for the respective parties, the crux of the matter is that, is there any admission on the part of the appellant-second defendant-Indus Ind Bank to make payment under the Bill of Exchange.

20. It is the submission of the learned Senior Counsel appearing for the appellant-Indus Ind Bank that the Bills were under collection and not under Letter of Credit before the transportation of the goods. All communications in this regard were made by the third respondent-Indian Bank, referring the transaction under dispute as "Documentary Collection" and not "Letter of Credit". All Documents Collection between Bankers and Letters of Credits are subject to URC (Universal Rules of Collection) and UCP (Uniform Customs and Practices for documentary credits) 2007, as formulated by the International Chamber of Commerce Publication Number 600. As per Article 6 of the UCP 600, a Letter of Credit cannot be issued by a Bill of Exchange drawn on the second respondent-buyer (first defendant-Proprietorship Firm), whereas, the Bill of Exchange under the subject matter of transaction is raised by the first respondent-seller (plaintiff) on the second respondent-buyer (first defendant-Proprietorship Firm). According to the learned Senior Counsel appearing for the appellant-second defendant-Indus Ind Bank, this clearly indicates that the transactions under dispute do not fall under category of Letter of Credit. The said Bill of Exchange which is drawn by the first respondent-plaintiff on the second respondent-first defendant-Proprietorship Firm, was accepted by the second respondent and the acceptance of the Bill of Exchange by the second respondent was only conveyed by the appellant-Indus Ind Bank to the third respondent-Indian Bank by

way of IFN 754 (SFMS). The said Bill of Exchange is drawn by the first respondent-plaintiff and it is not backed and supported by the Letter of Credit and only on the instructions by the buyer, the demand will be met. In the instant case, the second respondent-first defendant-Proprietorship Firm has informed that since the goods supplied by the first respondent-plaintiff were defective, they were returned and thus, he has instructed not to make payment. This factum was denied by the first respondent/plaintiff stating that the payment in respect of the transaction was made by the appellant-Indus Ind Bank to the third respondent-Indian Bank, i.e. seller Bank by sending message through SFMS mode in IFN 754.

21. Therefore, when the first respondent-plaintiff has chosen to discount the Bills in the earlier transaction, this time, the appellant-Indus Ind Bank (second defendant), with the collusion of the second respondent (first defendant-Proprietorship Firm), is giving a different interpretation that the letters "LC" denotes "Local Collection" and not the "Letter of Credit". Above all, we find that the third respondent-Indian Bank has made detailed submissions saying that all the transactions were made through the "Document Collection" method and sending message through SFMS mode by referring to IFN 754 is covered by the Letter of Credit. When the transactions are supported by the Letter of Credit, the obligation is cast upon the appellant-Indus Ind Bank to make payment to the third respondent-Indian Bank on behalf of its customer and the appellant-Indus Ind Bank cannot give the interpretation of LC as "Local Collection", when the fact remains that "LC" in this case only connotes "Letter of Credit".

22. We have perused the records. For all the past transactions, the payments have been clearly made. For the first time, the appellant-second defendant-Indus Ind Bank is giving a different version stating that the letters "LC" relates to "Local Collection" and not "Letter of Credit". In fact, the learned Single Judge has correctly held that the appellant-second defendant-Indus Ind Bank, by SFMS message dated 17.06.2017, acknowledged acceptance and unconditionally undertook to make the payment by way of message denoting the due date as 09.09.2017 in respect of the transaction in question. Therefore, it is a clear admission made by the appellant-second defendant-Indus Ind Bank. The contention of the appellant-second defendant-Indus Ind Bank that the transaction is not backed by Letter of Credit, cannot be accepted. It is further contended by the learned Senior Counsel appearing for the appellant-second defendant-Indus Ind Bank that only on the instructions, since the goods were defective, they have been returned. But absolutely no document is produced before this Court to show that the goods were returned by the second respondent-first defendant-Proprietorship Firm. Therefore, it is clear that after admission, the second respondent is cleverly trying to avoid

payment by giving wrong interpretation to the letters "LC", which on the facts, show that it is only "Letter of Credit" and not "Local Collection". Under such circumstances, we do not find any infirmity in the impugned order passed by the learned Single Judge and therefore, the O.S.A. is liable to be dismissed.

23. In the above view taken by this Court based on the merits of the matter, it is not necessary to deal with the decisions relied on by the learned counsel appearing for the parties.

24. For the foregoing reasonings, the O.S.A. is dismissed. No costs. Consequently, C.M.P. is closed.

Sd/-
Assistant Registrar

//True Copy//

Sub Assistant Registrar

cs

TO:

1.Ths Sub Assistant Registrar,
Original Side,
High Court, Madras.

+2cc to Mr.J.Manikandan, Advocate sr.no.29055
+1cc to M/s.Aiyar & Dolia, Advocate sr.no.28990
+1cc to M/s.Govind Chandrasekhar, Advocate sr.no.28917
+2cc to M/s.Ramalingam & Associates, Advocate sr.28871

Judgment
in

सत्यमेव जयते

O.S.A.No.274 of 2018

rv(co)
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