IN THE HIGH COURT OF JUDICATURE AT MADRAS
DATED : 25.02.2021

CORAM

THE HONOURABLE MR.JUSTICE T.RAJA
AND
THE HONOURABLE MR.JUSTICE P.RAJAMANICKAM

A.S.No.947 of 2020

1.Standard Chartered Bank,
Small Medium Enterprises Banking
Consumer Banking,
Rep. By its Regional Sales Manager
Mr.K.Satish,
No.8, Haddows Road,
Chennai - 6.

2.Standard Chartered Bank,
Rep. By its Manager,
No.19, Rajaji Salai Branch,
Chennai - 1. .. Appellants/ Defendants

Versus

M/s.Olympics Cards Limited,
Rep. By its Managing Director
Mr.N.Mohammed Faizal,
Having its registered Office at
No.195, N.S.C. Bose Road,
Chennai - 1. .. Respondent/Plaintiff

Prayer: First Appeal has been filed under Order 41 Rule 1 read with Section 96 of Civil Procedure Code, against the judgment and decree dated 29.11.2019 passed by VI Additional City Civil Court Judge, Chennai, in O.S.No.5239 of 2019.

For Appellants : Mr.M.S.Murali
for M/s.R & P Partners
For Respondent : Mr.K.Sankaran

JUDGMENT
(Judgment of the Court was delivered by T.RAJA, J.)

The defendants in the suit are the appellants and the plaintiff in the suit is the respondent. The defendants/appellants herein have filed this appeal challenging the impugned judgment and decree dated 29.11.2019 passed in O.S.No.5239 of 2019 by the learned VI Additional City Civil Court Judge, Chennai, partly decreeing the suit with a direction to the defendants/appellants to pay a sum of Rs.33,13,634.39/- to the plaintiff with interest at 9% per annum from the date of plaint till the date of judgment and again with further interest at 6% per annum from the date of judgment till the date of realization.

2. For the sake of convenience, the parties will be referred to as arrayed in the original suit.

3. It is averred in the plaint that the plaintiff's Company was incorporated on 21.04.1992 to carry on business of manufacturers, importers, exporters, dealers and retailers in all types and varieties of stationery, wedding cards, invitations, greeting cards, etc. They are having their bank account with the second defendant bank. It is the claim of the plaintiff that the defendant bank after satisfying with the financial requirement of the plaintiff sanctioned credit facility by Banking Arrangement Letters dated 02.03.2007, 11.10.2007 and 03.04.2008 as stated below:-

a) Overdraft Rs.6,45,00,000/-
b) Term Loan-1 Rs.1,50,00,000/-
c) Term Loan-2 Rs.1,00,00,000/-
d) Import Letter of Credit Rs.50,00,000/-
e) Inland Letter of Credit Rs.12,50,000/-
f) Housing Loan in the name of H.Noormohamed and S.Jarina Rs.1,50,00,000/-

The plaintiff in order to extend his business resolved to import printing machines from Germany, and therefore, when the plaintiff approached the defendant bank for Letter of Credit for a sum of Euro 2,16,800/- favouring HEIDSLBERGER, Germany, the Bank has also issued a Letter of Credit to the plaintiff. Thereafter, as requested by the Bank, the plaintiff also deposited a sum of Rs.20 lakhs towards the margin money for the Letter of Credit and another sum of Rs.3 lakhs on 10.04.2006 for forward contract. However, it is alleged, the defendant bank without issuing forward contract delayed the process. Therefore, the plaintiff made an oral request to open forward contract, but, the defendant bank was negligent in opening the forward contract as on 24.02.2006, hence, again, the plaintiff said to have made a request to open fixed deposit for Rs.3 lakhs on 29.03.2006, but, it was opened only on 07.04.2006. Finally, the second defendant bank opened the forward contract on 26.04.2006 for the value of Euro 1,70,000/- instead of Euro 2,16,800/-. When the date of Letter of Credit was mentioned as 24.07.2006, the due date under the Letter of Credit was mentioned as 18.08.2006 and value of Euro rate was 53.3947880. But, on the date of payment of Letter of Credit the rate of Euro increased to 59.96. Therefore, it was claimed that the plaintiff suffered a loss of Rs.14,23,338/-, hence, such sum may be directed to be paid towards deficiency in service.

4. It is further claimed by the plaintiff that on account of unjust, unfair acts of the defendant bank, the plaintiff had suffered financial loss apart from mental agony, therefore, the plaintiff, after closing their account with the defendant bank, moved to Kotak Mahindra Bank, however, the defendant bank have wrongly levied pre-closure penalty to the tune of Rs.14,49,444/- for the closure of overdraft account. When the defendant bank issued zero balance letter on 05.02.2008, there is no question of charging pre-closure penalty, because, overdraft limit was closed on 21.01.2008 by the defendant bank. Moreover, during the closure of account, the defendant bank retained five demand drafts sent by the plaintiff through registered post on 17.12.2007 and this has resulted in charging of excess interest in all accounts amounting to Rs.2,54,029.02/- and thus, on account of belated realization, the plaintiff had to pay interest to Kotak Mahindra Bank a sum of Rs.1,86,823.37/-, for, Kotak Mahindra Bank, in order to take over the account, handed over five demand drafts to the defendant bank. But, the defendant bank retained those five demand drafts without realizing the same, which is contrary to Fair Practices Code on Lender's Liability. Thereafter, the plaintiff sent E-mails dated 05.01.2008, 08.01.2008 and 10.01.2008 calling upon the defendant bank to realize the five demand drafts sent by them through registered post on 17.12.2007. It was only thereafter, the defendants realized the demand drafts on 14.01.2008 presuming that the plaintiff may approach the Banking Ombudsman.

5. On the other hand, it is the claim of the defendant bank that at no point of time, the plaintiff made any request for forward contract by opening the Letter of Credit as could be seen from the customer's acceptance Letter of Banking Arrangement (LOBA) dated 11.02.2006. But, at a later point of time, the request of the plaintiff was considered and thereby they were given forward contract facility as per LOBA dated 03.04.2008, however, to enjoy the forward contract facility, the borrower should maintain minimum 25% cash margin as per the terms and conditions of the Bank. But, the financial position of the plaintiff was not supporting the repeated enhancement in Letter of Credit facility. Despite that, the defendant bank offered Rs.1,05,00,000/- to the plaintiff. It is further averred that on completion of the documentation, the forward contract was booked during April, 2006 and thereby Letter of Credit was amended and repayment under the same was also rescheduled. At this stage, although the plaintiff had the option to cancel the existing contract and to re-book a fresh one under the amended Letter of Credit, the plaintiff did not opt for the same resulting in payment under the Letter of Credit after the maturity of the forward contract. However, on maturity of forward contract on 24.07.2006, the plaintiff cancelled the same and enjoyed a profit of Rs.2,10,800/- and the same was also credited to the plaintiff's account. Thus, the bank cannot be found guilty of

any deficiency in service.

6. Learned trial Court framing the following issues;

"1. Whether the defendants were negligent in opening forward contract on 26.04.2006 for Euro 1,70,000/- instead of Euro 2,16,800/- mentioning due date of letter of credit as 24.07.2006, falling for payment on 18.08.2006, and resulting in loss of Rs.14,23,338/- to the plaintiff?

2. Whether the defendants failed and neglected to open forward contract in respect of documentary letter of credit dated 24.02.2006 as per the letter of credit?

3. Whether loss of Rs.3,19,651.84/- is incurred by the plaintiff on account of delayed opening of forward contract on 23.11.2007, instead of 28.09.2007?

4. Whether the defendant's delay in opening forward contract on 23.11.2007 in respect of letter of credit for Euro 1,24,864.00 resulted in loss of Rs.3,19,651.84 to the plaintiff, despite acknowledging the receipt of margin money on 28.09.2007.

5. Whether the defendants had agreed to charge 9.25% p.a. as fixed interest rate for the second term loan of Rs.1 crore and caused loss to the plaintiff to the extent of Rs.1,28,048.77/- by disregarding the agreement?

6.Whether the retention of five bankers cheque in all for Rs.2,15,90,692/- from 18.12.2007 to 14.01.2008 is justified?

7. Whether the delayed retention of five bankers cheques in all for Rs.2,15,90,692/- resulted in KMB charging interest of Rs.1,86,823.37/- to the plaintiff for the two term loans, and if so, whether the defendants are liable to reimburse the amount to the plaintiff?

8. Whether the plaintiff is entitled to claim interest charged by the defendants for the two terms loan amounting to Rs.2,54,029.02 for the period from 18.12.2007 to 14.01.2008?

9. Whether the defendants are entitled to charge the plaintiff preclosure penalty of Rs.14,49,449/- for the closure of their overdraft account?

10.Whether the defendants delayed realization of all the Bankers cheque resulting in KMB charging interest on plaintiff's cash credit account a sum of Rs.5,63,712.32/-, for their sanctioned limit from 17.12.2007 to 14.01.2008 and if so whether the defendants are liable for the said amount?

11.Whether the defendants are liable for the amount of Rs.70,000/- cash paid to KVB towards processing charges for their second term loan of Rs.1.5 crore?

12. Whether the plaintiff is entitled to suit claim of Rs.44,94,711.62/- together with interest at the rate of 12% p.a. from the date of suit till realization with costs of suit.

13. To what relief, the plaintiff is entitled?"

and also after perusing Exs.P1 to P42 marked on the plaintiff side and also Exs.D1 to D28 marked on the defendants side, partly decreed the suit deciding the issues 1 and 2 in favour of the plaintiff. Issue Nos.6 to 9 were decided in favour of the plaintiff and the issue Nos.3,4,5,10 to 13 were decided against the plaintiff.

7. We have heard the learned counsel appearing on either side. Mr.M.S.Murali, learned counsel for the defendants/appellants and Mr.K.Sankaran, learned counsel for the plaintiff/respondent requested us to deal with the reasonings given by the learned trial Court with regard to the following issues:-

"1. Whether the defendants were negligent in opening forward contract on 26.04.2006 for Euro 1,70,000/- instead of Euro 2,16,800/- mentioning due date of letter of credit as 24.07.2006, falling for payment on 18.08.2006, and resulting in loss of Rs.14,23,338/- to the plaintiff?

2. Whether the defendants failed and neglected to open forward contract in respect of documentary letter of credit dated 24.02.2006 as per the letter of credit?

3. Whether loss of Rs.3,19,651.84/- is incurred by the plaintiff on account of delayed opening of forward contract on 23.11.2007, instead of 28.09.2007?

4. Whether the defendant's delay in opening forward contract on 23.11.2007 in respect of letter of credit for Euro 1,24,864.00 resulted in loss of Rs.3,19,651.84 to the plaintiff, despite acknowledging the receipt of margin money on 28.09.2007.

5. Whether the defendants are entitled

to charge the plaintiff preclosure penalty of Rs.14,49,449/- for the closure of their overdraft account?

8. It is not in dispute that the defendant bank had extended the credit facility to the plaintiff as stated below:-

a) Overdraft Rs.6,45,00,000/-
b) Term Loan-1 Rs.1,50,00,000/-
c) Term Loan-2 Rs.1,00,00,000/-
d) Import Letter of Credit Rs.50,00,000/-
e) Inland Letter of Credit Rs.12,50,000/-
f) Housing Loan in the name of H.Noormohamed and S.Jarina Rs.1,50,00,000/-

When the above banking facilities were given to the plaintiff based on the Banking Arrangement Letters dated 02.03.2007, 11.10.2007 and 03.04.2008, the plaintiff, in order to purchase the machine to expand their business, had approached the defendant bank for Letter of Credit for a sum of Euro 2,16,800/- favouring HEIDSLBERGER, Germany, and to that effect, Letter of Credit was also issued to the plaintiff on 24.02.2006/Ex.P4. Thereafter, on the request made by the Bank, the plaintiff deposited a sum of Rs.20/- lakhs towards the margin money for the Letter of Credit and another sum of Rs.3 lakhs on 10.04.2006 for forward contract. Here, the question that arises for consideration is whether the defendant Bank has caused any delay.

9. Mr.K.Sankaran, learned counsel for the plaintiff, argued that the plaintiff on several occasion orally requested the Bank to open the forward contract, but, the defendant Bank was negligent in opening the forward contract as on 24.02.2006. Therefore, a request was made to open the fixed deposit for Rs.3 lakhs on 29.03.2006, but, even this too was opened belatedly on 07.04.2006. Finally, when the second defendant opened the forward contract on 26.04.2006 for the value of Euro 1,70,000/- instead of Euro 2,16,800/-, there was a loss caused to the plaintiff, because, on the date of opening Letter of Credit i.e. on 24.02.2006 the Euro rate was 53.39, whereas on the date of payment of Letter of Credit i.e. on 18.08.2006 the rate of Euro increased to 59.96.

10. When the matter was taken up to Banking Ombudsman, the Assistant Manager, Office of the Banking Ombudsman, Chennai, vide order dated 03.11.2008, while considering the complaint made by the plaintiff against the defendant Bank, held that the issues related to booking of forward contract etc., do not come under the purview of Banking Ombudsman Scheme, 2006, and therefore, since there was no deficiency in service, the complaint made by the plaintiff is rejected under Clause 13(d) of the Banking Ombudsman Scheme, 2006. Thus, from this perspective, if we look at the case of the

plaintiff, it has to be seen whether there was any request made by the plaintiff to issue forward contract for Euro 2,16,800/- and that the said request has been ignored causing delay.

11. Learned counsel for the defendant Bank drawing our attention to Ex.P4-Letter of Credit dated 24.02.2006 demonstrated that the defendant Bank issued a Letter of Credit for Euro 2,16,800/-, not Euro 1,70,000/-. But, on the other hand, when it is the duty cast on the plaintiff to substantiate his claim that the second defendant bank belatedly issued the forward contract certificate for value of Euro 1,70,000/- instead of Euro 2,16,800/-, without producing any document to that extent, in our considered view, they cannot complaint that there was a deficiency in service. This was rightly looked into by the Banking Ombudsman and accordingly, the complaint made by the plaintiff against the defendant bank was rejected on 03.11.2008. As against which, the plaintiff did not prefer any appeal. Having accepted the finding given by the Banking Ombudsman rejecting their request that there was no deficiency in service against the defendant bank, it is not known how they can maintain this claim and unfortunately, learned trial Court also did not take note of the order passed by the Banking Ombudsman while deciding the issue Nos.1 and 2 in favour of the plaintiff.

12. As mentioned above, it was the claim of the plaintiff that they made only oral request to the Bank. It is not known how they can make oral request in a banking transaction and finally, the second defendant bank issued forward contract certificate on 26.04.2006. On the other hand, Ex.P4-Letter of Credit dated 24.02.2006 shows that they have issued Letter of Credit for Euro 2,16,800/- and not Euro 1,70,000/-. When this being the factual position bearing on record, the allegation made by the plaintiff that even after the request of the plaintiff to issue forward contract for Euro 2,16,800/-, the defendants have issued forward contract only for the value of Euro 1,70,000/- is without any substance, for, a copy of Letter of Credit dated 24.02.2006 clearly shows that Letter of Credit has been accepted for a sum of Euro 2,16,800/- in favour of HEIDSLBERGER, Germany, with whom the plaintiff placed an order to import machineries. But, this has been erroneously overlooked by the learned trial Court, hence, such an erroneous finding given by the learned trial Court in respect issue Nos.1 and 2 against Ex.P4 indicates its non-application of mind.

13. As against the rejection of complaint under Clause 13 (d) of the Banking Ombudsman Scheme, 2006, there is an appeal provision available under Clause 14 of the Banking Ombudsman Scheme, 2006, which is extracted below:-

> "14. APPEAL BEFORE THE APPELLATE AUTHORITY: (1) Any person aggrieved by an Award under clause 12 or rejection of a

> complaint for the reasons referred to in sub clauses (d) to (f) of clause 13, may within 30 days of the date of receipt of communication of Award or rejection of complaint, prefer an appeal before the Appellate Authority;
>
> Provided that in case of appeal by a bank, the period of thirty days for filing an appeal shall commence from the date on which the bank receives letter of acceptance of Award by complainant under sub. clause (6) of clause 12;
>
> Provided that the Appellate Authority may, if he is satisfied that the applicant had sufficient cause for not making the appeal within time, allow a further period not exceeding 30 days;
>
> Provided further that appeal may be filed by a bank only with the previous sanction of the Chairman or, in his absence, the Managing Director or the Executive Director or the Chief Executive Officer or any other officer of equal rank."

Aggrieved against the order passed by the Banking Ombudsman, since no appeal has been preferred as per the above said provision, we are not inclined to find nay merit in the argument advanced by Mr.K.Sankaran, learned counsel for the plaintiff. As such, since the issue Nos.1 and 2 are already answered against the plaintiff, connected issue Nos.3 and 4 will also fall.

14. In respect of issue No.5, as could be seen from Ex.P29/letter dated 05.02.2008 addressed to the plaintiff by the defendant bank, we are of the considered view that the defendant is not entitled to ask for pre-payment charges for the simple reason that in the said letter dated 05.02.2008, the plaintiff was informed that the overdraft credit limit has been reduced to nil with effect from 26.01.2008 and the overdraft credit facility of Rs.0/- is hereby treated as outstanding and due. Moreover, Ex.P30/Ledger Account shows that the plaintiff had repaid the entire loan amount of Rs.6.45 crores on 18.12.2007 and accordingly, zero balance has been arrived at on 26.01.2008. During this period, there was only 33 days left out. Therefore, we are of the considered view that pre-payment charges said to have been levied on the plaintiff by the defendant bank is not justified and accordingly, the finding given by the learned trial Court in respect of issue No.9 is upheld and it is answered in favour of the plaintiff.

15. In fine, for the reasons stated above, the Appeal Suit is partly allowed by reversing the impugned judgment and decree passed by the learned trial Court to the extent mentioned above. With regard to costs, considering the peculiar facts and circumstances of the case, both parties are directed to bear the costs.

DATED:25.02.2021

"FOR BEING MENTIONED"

This Petition having been listed under the caption for being mentioned on Thursday Twenty Sevnth day of April, Two Thousand and Twenty One persuant to the order of this court dated 25.02.2021 and made herein, in the presence of the abovesaid Advocate, on either side,this Court made the following order:

This appeal is listed today under the caption "for being mentioned" at the instance of Mr.K.Sankaran, learned counsel for the plaintiff/respondent.

2. Mr.K.Sankaran, learned counsel for the plaintiff/respondent, submitted that since Issue Nos.6 to 8 were already decided by the learned trial Court in favour of the plaintiff/respondent, during the course of arguments on 25.02.2021, both parties have agreed upon the issue Nos.6 to 8, hence, they deserved to be upheld in this appeal.

3. Mr.M.S.Murali, learned counsel for the defendants/appellants, also fairly stated that Issue Nos.6 to 8 were decided in favour of the plaintiff by the learned trial Court, therefore, the same are to be affirmed in this order as well.

4. In view of the above, let us recap the findings given by the learned trial Court relating to Issue Nos.6 to 8, which are extracted below:

> "6.Whether the retention of five bankers cheque in all for Rs.2,15,90,692/- from 18.12.2007 to 14.01.2008 is justified?
>
> 7. Whether the delayed retention of five bankers cheques in all for Rs.2,15,90,692/- resulted in KMB charging interest of Rs.1,86,823.37/- to the plaintiff for the two term loans, and if so, whether the defendants are liable to reimburse the amount to the plaintiff?
>
> 8. Whether the plaintiff is entitled to claim interest charged by the defendants for the two terms loan

amounting to Rs.2,54,029.02 for the period from 18.12.2007 to 14.01.2008?"

5. While dealing with issue No.6, namely, whether the retention of five bankers cheque in all for Rs.2,15,90,692/- from 18.12.2007 to 14.01.2008 is justified, learned trial Court, considering the fact that the plaintiff was not happy with the services of the defendant bank; that consequential switching over to the Kotak Mahindra Bank (KMB) and closing of their account with the defendant bank; and that depositing of banker's cheques in Ex.P20 to the tune of Rs.6.45 crores, held that the defendant bank are not justified in retaining the banker's cheques from 18.12.2007 to 14.01.2008 and thereby, it has decided the issue No.6 in favour of the plaintiff. As the learned counsel for both parties have agreed that issue Nos.6 to 8 are to be affirmed, we make it clear that the defendant bank are not justified in retaining the banker's cheques from 18.12.2007 to 14.01.2008 and accordingly, issue No.6 is answered in favour of the plaintiff as decided by the learned trial Court.

6. Issue Nos.7 and 8 are consequential in nature to Issue No.6. It is to be noted that for the delay caused by the defendant bank in clearing the cheques on time, the plaintiff was made to pay the interest to the tune of Rs.1,86,823.37/- by the KMB, therefore, as rightly held by the learned trial Court, the defendant bank is liable to pay the said sum to the plaintiff. Similarly, due to the delay on the part of the defendant bank in clearing the cheques on time, charging of interest by them to the tune of Rs.2,54,029.02/- for the period from 18.12.2007 to 14.01.2008 is unreasonable, therefore, answering the issue Nos.7 and 8 in favour of the plaintiff, we make it clear that the plaintiff is entitled to a sum of Rs.2,54,029.02/-, which was already debited by the defendant bank.

7. Mr.K.Sankaran, learned counsel for the plaintiff, requested the Court to direct the Registry to release 20% of the decree amount as the defendants have not obtained an order of interim stay. He further sated that as per Order 41, Rule 5(1) of the Civil Procedure Code, pendency of appeal shall not operate as a stay of the proceeding. In replay, Mr.M.S.Murali, learned counsel for the defendant bank, submitted that the plaintiff has already filed E.P.No.807 of 2020 before the learned XIV Assistant Judge, City Civil Court, Chennai, and it is pending, besides, the defendants/appellants are having the right of appeal, therefore, the same cannot be foreclosed. Since the E.P.No.807 of 2020 filed by the plaintiff/respondent is pending, it is for them to work out their remedy before the appropriate forum in accordance with law.

8. The Registry is directed to issue the order copy afresh within a period of one week from today.

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

rkm
To

The VI Additional Judge,
City Civil Court,
Chennai.

A.S.No.947 of 2020

A.SK(30.04.2021)