**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

Date of Decision: 22.02.2023

1. RFA-COM-22-2018 (O&M)

ORIENTAL BANK OF COMMERCE …Appellant

VERSUS

MALYAN BANKING BHD …Respondent

2. RFA-COM-23-2018 (O&M)

ORIENTAL BANK OF COMMERCE …Appellant

VERSUS

MALYAN BANKING BHD …Respondent

3. RFA-COM-24-2018 (O&M)

ORIENTAL BANK OF COMMERCE …Appellant

VERSUS

MALYAN BANKING BHD …Respondent

4. RFA-COM-25-2018 (O&M)

ORIENTAL BANK OF COMMERCE …Appellant

VERSUS

HSBC BANK …Respondent

**CORAM: HON'BLE MR. JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Harsh Garg, Advocate
for the appellant.

Mr. Devmani Bansal, Advocate
for the respondent.

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VIKRAM AGGARWAL, J.

1. By way of the present judgment we shall decide four appeals. Though all appeals are directed against separate judgments of the same date i.e. 15.05.2015, the question of law arising in all the appeals is the same and the appellant is also the same.

2. M/s G.E. Conductors Private Limited (hereinafter referred to as 'the buyer'), a company incorporated in India had placed an order for purchase of copper from one M/s SIMs Copper SDN BHD (hereinafter referred to as 'the beneficiary'), which is a company incorporated in Malaysia. A contract was entered into between the buyer and the beneficiary for purchase of copper. At the instance of the buyer, the present appellant-defendant bank i.e. the Oriental Bank of Commerce (hereinafter referred to as 'the Issuing Bank') issued an irrevocable letter of credit dated 09.11.2011 in the sum of USD 388,800 in favour of the beneficiary. The respondent-plaintiff/bank i.e. Malyan Banking BHD (in RFA-COM-22, 23 and 24 of 2018) and HSBC Bank (in RFA-COM-25-2018) are the negotiating banks (hereinafter referred to as 'the Negotiating Banks'). The letter of credit issued by the Issuing Bank was an irrevocable letter of credit. The Issuing Bank irrevocably and unequivocally agreed to reimburse the Negotiating Banks

with the amount due on the maturity of the letter of credit subject to the fact that the documents negotiated constituted a compliant presentation and were in accordance with the terms of the letter of credit in question. Some dispute arose between the buyer and the beneficiary as a result of which the letter of credit was invoked. Suits were filed by the buyer against the Negotiating Banks as also the Issuing Bank and the beneficiary. An order was passed, restraining the Issuing Bank from releasing the amount to the beneficiary. Under these circumstances, the Negotiating Banks instituted suits under Order 37 of the Code of Civil Procedure 1908 (hereinafter referred to as 'the CPC') for recovery of USD 396,567.90 equivalent to INR 2,49,83,777.70 (the amounts may vary in all four cases) but the facts are being taken from RFA-COM-22-2018 as the question of law is the same.

3. The suits were contested by the Issuing Bank and applications for leave to defend the suits were moved. Various grounds were taken.

4. Vide the judgments under challenge, the suits filed by the Negotiating Banks were decreed giving rise to the present appeals.

5. We have heard learned counsel for the parties.

6. Learned counsel for the appellant(s) has, at the outset, submitted that he is restricting his arguments only on the point of limitation and is not challenging the impugned judgment on merits. It has also been very fairly submitted that the question of limitation arises only in the first three appeals i.e. RFA-COM-22, 23 and 24 of 2018 and it does not arise in RFA-COM-25-2018. The essential issue which has been raised by learned counsel is that

once the payment qua the letter of credit had been rejected by the Issuing Bank, the cause of action would arise, the limitation would start running and, therefore, the suit could have been filed within a period of three years thereafter. Learned counsel has contended that the letter of credit was issued on 09.11.2011, the claim was raised on 01.12.2011, the same was rejected by the bank on 20.01.2012 and the suit was filed on 05.05.2015. It has been submitted that the right to sue had accrued to the Negotiating Banks on 20.01.2012 and, therefore, the limitation for filing a suit for recovery ended on 19.01.2015 whereas the suit was filed on 05.05.2015. In support of his contentions, learned counsel has relied upon the judgments of Hon'ble Supreme Court in ***Vashdeo R. Bhojwani versus Abhyudaya Co-operative Bank Ltd. & Anr. 2019 AIR (Supreme Court) 4671, Balakrishna Savalram Pujari Waghmare versus Dhyaneshwar Maharaj Sansthan 1959 AIR (Supreme Court) 798 and State of Punjab and others versus Gurdev Singh and Ashok Kumar 1991 (3) S.C.T. 91.***

7. On the other hand, learned counsel representing the respondent has submitted that the suit had been filed well within limitation. Learned counsel has contended that the validity of the letter of credit was from 09.11.2011 to 08.05.2012. It has been submitted that the cause of action would not arise on 20.01.2012 but would arise on 08.05.2012 when the validity of the letter of credit ended and the same was not paid. Reliance has been placed upon the provisions of Section 23 and Article 113 of the Limitation Act, 1963 (hereinafter referred to as 'the Limitation Act').

Reliance has also been placed upon the judgments of Hon'ble Supreme Court in ***Millenium Wires Private Limited versus State Trading Corporation of India Limited and others (2015) 14 Supreme Court Cases 375, Federal Bank Ltd. Versus V.M.Jog Engineering Ltd. and others (2001) 1 Supreme Court Cases 663, UBS AG versus State Bank of Patiala (2006) 5 Supreme Court Cases 416 IDBI Trusteeship Services Limited versus Hubtown Limited (2017) 1 Supreme Court Cases 568,*** the judgment of High Court of Bombay in ***Malayan Banking Berhad versus Indusind Bank Limited 2017 (1) ALL MR 626*** and the Judgment of Delhi High Court in ***Allahabad Bank versus Malayan Banking Limited 2020 (2) AD (Delhi) 187***

8. We have given our thoughtful consideration to the controversy in hand.

9. Before adverting to the merits of the case, it would be important to refer to the statutory provisions. Section 23 of the Limitation Act lays down as under:-

> "23. Suits for compensation for acts not actionable without special damage.—In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results."

Further Article 113 of the Limitation Act states as under:-

> "**Article 113—**If the payment, even though it be of tax, has been made by the party labouring under a mistake of law the party is

> entitled to recover the same within the period of limitation of 3 years from the date when the mistake was known; Assam Industrial Corporation v. Union of India, (1991) 1 CCC 116 (Gau DB)."

10. Now coming to the facts of the case, learned counsel for the appellant i.e. Issuing Bank has confined his arguments only to the point of limitation which also arises only in the first three cases and does not arise in the 4th appeal. There are certain admitted dates regarding which there is no dispute. The letter of credit was valid from 09.05.2011 to 08.05.2012. The claim was led by the Negotiating Banks on 01.12.2011. It was rejected by the Issuing Bank on 20.01.2012 and the suit was filed on 05.05.2015. In the considered opinion of this Court, limitation would not start running from the date of rejection by the Issuing Bank but would start running from the date of expiry of the letter of credit. First of all, it is a matter of common human conduct that even when the case was rejected by the Issuing Bank on 20.01.2012, the letter of credit was still valid and, therefore, a decision could still have been taken for payment by 08.05.2012. All doors were closed only on 08.05.2012 when the validity of the letter of credit expired. It would at this point of time that the cause of action would arise and the limitation would start running. Section 23 of the Limitation Act precisely deals with such kind of a situation because the specific injury would result only when the validity of the letter of credit came to an end and not before that. Article 113 of the Limitation Act also lays down a period of 03 years from the date when the

right to sue accrues. As noticed above, the right to sue would accrue on the expiry of the letter of credit i.e. 08.05.2012 and strictly speaking the right to sue arose on 09.05.2015. The suit was filed on 05.05.2015 which was well within the period of 03 years and, therefore, was not barred by limitation. In ***Malyan Banking Berhad's case*** (supra), the Bombay High Court was dealing with a similar issue. There also, a stand had been taken that the claim was time barred. After examining the factual aspects, it was held that the date on which the defendant had refused to pay could not be the date of reckoning as the plaintiff was entitled to wait till the maturity date and considered that date as the date on which the cause of action would arise. The relevant part dealing with this issue is reproduced as under:-

> *"24. The defendant also took a stand, that the claim is time barred. The submission of the Defendant is incorrect because the moment, the Defendant accepted the documents the liability to pay has got triggered. The 90 days time to pay i.e., the maturity date, was 5th March, 2012 and the suit was lodged on 3rd March, 2015. The date on which the Defendant refused to pay cannot be the date of reckoning as the plaintiff in my view, is entitled to wait till the maturity date and consider that date as the date the cause of action arose."*

11. We have perused the judgments relied upon by the appellant (Issuing Bank).

12. In the case of ***Vashdeo R.Bhojwani*** (supra), the Hon'ble Apex Court was dealing with a Section 7 petition, filed before the NCLT claiming a

particular amount. In that case, the petition had been filed in 2017 claiming that the amount together with interest was payable as the same was pending since 1998. The petition was admitted by the NCLT stating that as the default continued, no period of limitation would attach. The appeal filed before the NCLT was also dismissed. However, the Hon'ble Apex Court held that once the recovery certificate had been issued in 2001, the limitation would begin ticking and, therefore, the petition filed before the NCLT on 21.07.2017 would be barred by limitation. In that case, there was no issue of a period of validity of the letter of credit and the question was only whether it was a continuing cause of action or not which is not so in the present case. This judgment would, therefore, not come to the aid of the Issuing Bank. For the same reasons, the judgment in ***Balakrishna Savalram Pujari Waghmare's case*** (supra) would also not apply to the facts of the present case. The judgment in ***State of Punjab and others versus Gurdev Singh and Ashok Kumar's case*** (supra) was altogether on a different point as there the contention was that if the dismissal of the employee was illegal, void or inoperative being in contravention of the mandatory provisions of the Rules or conditions of service, there would be no limitation to file a suit for declaration. The Hon'ble Apex Court, however, held that such a case would fall under Article 113 of the Limitation Act. In the present case, there is no plea of there being no limitation but the plea is only with regard to the point as to when the right of sue would arise. This judgment would also, therefore, not help the Issuing Bank.

13. We have gone through the other judgments relied upon by the Negotiating Banks also but since they deal with other issues of the matter, which have not been pressed during the course of arguments as arguments have been restricted only to the point of limitation, they are not being discussed.

In view of the aforementioned facts and circumstances, we do not find any merit in the present appeals and the same are, therefore, dismissed.

(AUGUSTINE GEORGE MASIH) **(VIKRAM AGGARWAL)**
JUDGE **JUDGE**

Date:22.02.2023
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Whether speaking/reasoned: Yes/No
Whether reportable: Yes/No