IN THE HIGH COURT AT CALCUTTA
COMMERCIAL APPELLATE JURISDICTION
ORIGINAL SIDE

BEFORE:

The Hon'ble Justice Soumen Sen
and
The Hon'ble Justice Apurba Sinha Ray

AD-COM/1/2025
with
CS/58/2016
Firoz Akhtar Baidya & Anr.
VS.
Dalgreen Agro Pvt. Ltd. & Ors.

For the Appellant : Mr. Shuvasish Sengupta, Adv.
Mr. Ramij Munsi, Adv.
Mr. Rittick Chowdhury, Adv.
Ms. Champa Pal, Adv,

For the Respondent : Mr.Anirban Ray, Sr. Adv.
Mr. Jayanta Sengupta, Adv.
Mr. Pratik Shanu, Adv.

Hearing concluded on : 22nd July, 2025

Judgment on : 23rd July, 2025

Soumen Sen, J.

1. The appeal is against a judgment and decree dated 15th May, 2023 passed by Hon'ble Justice Krishna Rao in CS 58 of 2016 in a suit for recovery of price of goods sold and delivered and in the alternative a decree for damages quantified at Rs.4 crores.

2. There are eight defendants in the suit. The defendant Nos. 1, 2, 3 4, 5, 6 & 7 have filed their written statement. The defendant no. 8 had neither entered appearance nor filed any written statement in spite of service of Writ of Summons. At the time of trial only the defendant Nos. 6 and 7 had contested the suit. The other defendants did not participate in the trial and as such the question of adducing evidence on their behalf could not and does not arise at all. It was either an intentional act on their part to absolve or find an escape route for the defendant nos. 6 & 7, the present appellants from any liability due to lack of evidence but as luck would have it, the said ploy did not fructify and materialize as the said defendant nos. 6 and 7 had suffered a decree along with the other defendants.

3. The prefatory observation is on a careful reading of the pleadings, evidence and the findings of the learned Single Judge.

4. Curiously the defendant Nos. 6 and 7 are the appellants. Although separate written statement was filed by them and even at the trial they attempted to disassociate themselves from the liability on separate grounds, but they seemed to be united in appeal.

5. For the sake of convenience we briefly narrate the facts.

6. The plaintiff/respondent herein namely, Dalgreen Agro Private Limited is a company incorporated under the provisions and the Companies Act and engaged in several businesses including trading and export of agricultural products in Kolkata. The defendant no.1 namely, Shaikh

Asadur Rahman is allegedly an importer of agricultural products in Bangladesh. The defendant no. 2 namely, Md. Abdullah Al Mamun is allegedly an agent of the defendant no.1 carrying on business under the name and style of Mamun Brothers in Bangladesh. The defendant no. 3 namely, Md. Shamim Ahmed is allegedly also an agent of the defendant no. 1 carrying on business under the name and style of Shad Enterprise in Bangladesh. The defendant no. 4, Ajay Chowdhury and defendant no. 5, Anil Sharma had represented themselves as community brokers carrying on business through various companies and/or partnerships and/or proprietorship concerns. The defendant no. 6 namely, Firoz Aktar Baidya carries on business under the name and style of R.B. Roadways, as sole proprietor at Ghojadanga Gate. The defendant nos. 7 and 8, namely Mr. S Roy and Md. Zakir Hussain are the Customs House clearing and forwarding agents (CNF agents) at Ghojadanga Port, India and Bhomra Port, Bangladesh, respectively. The present appeal has been preferred only by the defendant nos. 6 and 7 who are the appellant nos. 1 and 2 herein.

7. It was the case of the plaintiff that the defendant nos. 4 and 5 had approached the plaintiff in and around the month of January 2015 with a proposal for exporting rice and wheat to Bangladesh and had introduced the plaintiff to the defendant no.1 as an importer of Bangladesh having high repute. In turn, defendant No. 1 was presented as a prominent Bangladeshi importer and Vice Chairman of the Khulna Chamber of

Commerce, whose credibility and business influence were instrumental in inducing the plaintiff to agree to the transaction.

8. The defendant nos. 1, 4 and 5 required the plaintiff to export rice and wheat from India to Bangladesh in favour of two consignees, namely, the defendant nos.2 and 3 who were identified as concerns under the control and management of the defendant no1. The defendant nos.4 and 5 had represented to the plaintiff that the entire modalities of identifying the sellers of such agri-products, identifying the transporters and CNF agents including transportation of the said products would be taken care of by them. Subsequently, an oral agreement was entered into by and between the plaintiff and the defendant nos. 1 to 5 at the office of the defendant no. 5 with the following terms and conditions:

> *"a) The plaintiff would first procure the aforesaid commodities viz rice and wheat from the suppliers identified by the defendant nos.1 4, and 5;*
>
> *b) The defendant nos.4 and 5 would take all necessary steps for transportation of the said commodities to the plaintiff.*
>
> *c) The defendant nos.1, 4 and 5 also identified the defendant no.6 for the purpose of taking all necessary steps to transport the commodities from the said sellers to the plaintiff and from the plaintiff as the exporter to the defendant no.1 and/or his representatives as the importer In Bangladesh.*

d) The plaintiff would receive the commodities as the purchaser and thereafter would send such goods to the defendant no.1 and/or his associates namely, the defendant nos.2 and 3. The plaintiff would be consignor and the defendant nos.2 and 3 would be the respective consignees.

e) The defendant no.1 would open a Letter of Credit for each of the Invoices raised by the plaintiff on the defendant nos.1, 2 and 3 through the Islami Bank of Bangladesh and the negotiating Bank of the plaintiff was to be ICICI Bank, Bhowanipore Branch, Kolkata.

f) The plaintiff's goods would be handled by the defendant no.7 who was a licensed Customs clearing and forwarding agent. The said agent was represented by three persons, namely, Prasanta Sarkar, Achinta Sarkar and Samir Sarkar. These three persons were identified as PSA Enterprises.

g) The defendant no.7 would forward the goods to the defendant no.8 who was the CNF Agent of the defendant no.1 and accordingly, the goods would be received by the defendant no.1 and his associates namely, the defendant nos.2 and 3.

h) The plaintiff would be required only to raise invoices and the Letter of Credit would be honoured within 21 days of shipment i.e. the receipt of the goods by the importer."

9. In furtherance of this arrangement, the plaintiff procured rice and wheat from LNC Agro Mills Pvt. Ltd. and Nivedita Exports and other suppliers being Exhibit A containing the details of procurement of Rice and Wheat, who were introduced by Defendant Nos. 4 and 5. It was alleged by the plaintiffs that at a later stage, subsequent inquiries revealed that these entities were not third-party suppliers but were in fact controlled by the defendants themselves. LNC Agro Mills was found to be owned by Defendant No. 4, while Nivedita Exports was registered allegedly in the name of Defendant No. 4's spouse. The plaintiff paid a total of ₹2,51,65,315 to these suppliers, which was recorded in Schedule E and corroborated by bank records. The plaintiff submitted all required documents, including invoice-cum-packing lists, transport challans, customs declarations, certificates of origin issued by the MCC Chamber of Commerce, insurance cover notes, and certificates of health, phytosanitary compliance. Customs endorsements and insurance certificates.

10. Upon procurement of the commodities, transportation from Burdwan to the Ghojadanga Land Customs Station was arranged by Defendant No. 5 through R.B. Roadways, the proprietorship of Appellant No. 1/Defendant No. 6. However, R.B. Roadways was not approved by the Indian Banks' Association (IBA), and in order to meet the LC compliance requirement, transport documents were instead prepared under the name of Jain Parivahan an IBA-approved transporter. This substitution, made without informing the plaintiff, was executed by PSA Enterprises

(Defendant No. 7), the customs clearing and forwarding agent, operating under the license of P.K. Ghosh & Sons. Defendant No. 6 later admitted this arrangement in the deposition of the Appellant No.1/ Defendant No.6.

11. Three Letters of Credit were thereafter issued: LC No. 86815010372 dated 20.04.2015 (USD 123,500) by Mamun Brothers (Defendant No. 2); LC No. 86815010373 (USD 152,500) by Shad Enterprises (Defendant No. 3); and LC No. 86815010330 (USD 152,500), by Mamun Brothers. All three LCs were issued by Islami Bank of Bangladesh and routed for negotiation through ICICI Bank, Kolkata. The plaintiff duly raised invoices dated 17.04.2015, 20.04.2015, and 22.04.2015 and submitted supporting export documentation to ICICI Bank, including packing lists, insurance policies, phytosanitary certificates, and customs-endorsed export declarations bearing the stamp of Ghojadanga Land Customs (Exhibit G, H and I, with objection). By a letter no.2470 dated 2 December, 2015, the Assistant Commissioner of Customs, Ghojadanga Land Customs, India had also certified that the exports were effected under the aforesaid unpaid Letters of Credit (LC) and shipping bills for which the payments had not been received.

12. The documents submitted by the plaintiff were verified by ICICI Bank and then forwarded to the issuing bank in Bangladesh. It was only thereafter that issues were raised regarding alleged discrepancies with the non-fulfilment of clauses of the LC. Islami Bank specifically cited discrepancies in the documentation as grounds for refusing acceptance of

the delivery. These deficiencies in the transport documentation formed the basis for the bank's rejection of the shipment. These discrepancies were communicated through SWIFT messages to ICICI Bank messages (Exhibit K, L and M). The key issues identified were:

- The use of a non-IBA approved transporter (Jain Parivahan being used instead of the actual carrier R.B. Roadways)
- Incomplete/invalid truck documentation (missing proper carrier identification and authorized signatures)
- Improper consignee designation (using "to order of" rather than naming the specific consignee as required)

13. Based on these grounds, the bank refused payment under the Letters of Credit (LC), as the submitted documents failed to strictly comply with the LC's terms and conditions regarding transport and delivery verification. The bank's position was that such material discrepancies in the shipping documents released them from payment obligations under the LC agreement.

14. It was the primary case of the plaintiff that although certain payments were honoured, payments under three other Letters of Credit bearing no. 086815010373 (rice) (Exhibit F), no.086815010330 (rice) (Exhibit E) and no.086815010372 (wheat) (Exhibit D) were not made to the plaintiff. The defendants had deliberately raised issues pertaining to the documents referred to in the Letters of Credit for delaying payments and subsequently not made them at all.

15. An email dated 26 January, 2016 (Exhibit AA, with objection), sent by the Deputy Director of Bangladesh Bank, Customs Service Division, on behalf of Defendant No. 3, stated that the documents presented against the three LCs were found to be discrepant. These discrepancies had been conveyed to the LC negotiation bank, ICICI, through SWIFT messages, pursuant to which two original documents against LC Nos. 08615010330 and 086815010372 were returned to the negotiating bank. It was further stated that the Customs House at Bhomra, Bangladesh, had informed that the consignments under the said LCs had not entered Bangladesh. This information was communicated on 31 December, 2015.

16. In response to the above email, Dalgreen responded by email dated 5th February, 2016 (Exhibit BB with objection) stating that the goods under the LCs had been dispatched in April. Moreover, refuting the discrepancies as frivolous and it was pointed out that the non-receipt of goods was first communicated by the importers vide letters dated 31st December, 2015 and 1st January, 2016 (Exhibit Q, R, S with objection) several months after the goods had been dispatched in April 2015, indicating that the objection was an afterthought.

17. Subsequent investigations conducted by the Bangladesh Customs Authority i.e. the Investigation Report dated 18th June 2017, revealed that the very same goods initially shipped by the plaintiff under the three dishonoured Letters of Credit were made to enter into Bangladesh

under three new LCs, namely LC Nos. 868150103353, 86815010279, and 86815010339. These new LCs were issued by Maa Banijjaya Bhandar, a firm owned and controlled by Defendant No. 1. The export documents accompanying these consignments misrepresented the identity of the consignor, showing Nivedita Exports in place of the plaintiff, Dalgreen Agro Pvt. Ltd. The investigation found that these documents were supported by forged customs seals and fabricated signatures purporting to be from both Indian (Ghojadanga) and Bangladeshi (Bhomra) customs authorities. These findings are recorded in the Customs Investigation Report. Defendant No. 8, Raj Traders, was found to have coordinated the clearance of these shipments on the Bangladesh side, while Defendant No. 7, PSA Enterprises, handled the falsified documentation on the Indian side.

18. The Bangladesh Customs Authority further concluded that the export documents submitted under the second set of LCs contained forged LC instruments, fabricated banking endorsements, and export challans that did not match the records held by Indian customs. It was observed that the original consignments had been rerouted without genuine import clearance and that forged documents were created to support a second remittance of foreign exchange for the same goods. The Authority explicitly noted that such double remittance under two separate LCs, for the same underlying transaction, was impermissible under foreign exchange and customs regulations.

19. The investigation report concluded that the fraudulent re-routing of consignments was facilitated through collusion between Indian and Bangladeshi agents, importers and exporters. Defendant No. 1, in addition to being the interested party under the original LCs, was also the proprietor of Maa Banijjaya Bhandar, the beneficiary under the second set of forged LCs. Given this dual role, and his position as the orchestrating party behind both sets of transactions, it is legally unsustainable to deny Defendant No. 1's knowledge or involvement in the fraud. The report states that enforcement action has already been initiated against Defendant No. 1, Shaikh Asadur Rahman, as well as Defendant No. 8, Md. Zakir Hossain, who operated as the clearing and forwarding agent on the Bangladesh side under the name and style of Raj Traders.

20. The plaintiff also submitted evidence indicating that Defendant No. 4, Ajay Chaudhary, held the position of Executive Director at Maa Importers in Bangladesh, wherein he posed as a resident of Bangladesh. Such misrepresentation along with the findings of the Bangladesh Customs Investigations points to his active involvement in orchestrating the fraud and further corroborates his role in the cross-border scheme undertaken by the defendants which was also proved.

21. The plaintiffs in support of their case have adduced the following three witnesses-DW 1 - Utpal Chaudhary, DW 2 – Rajesh Chura and DW 3 – Investigating Officer, Bhowanipore PS.

22. DW 1, Utpal Chaudhary, served as the Chief Operating Officer (COO) of the Plaintiff Company at the time of the dispute. In his capacity as COO of Dalgreen Ltd., he was responsible for overseeing the entire operational chain to ensure its smooth functioning.

23. He deposed that the transportation of the consignments was carried out by R.B. Roadways (Defendant No. 6), whose role was to deliver the goods to Defendants Nos. 1, 2, and 3 in Bangladesh. He further stated that the entire transaction had been arranged by the defendants themselves, and specifically, that the appointment of R.B. Roadways had been made by Defendants Nos. 1, 2, 3, 4, and 5 (Q.36). It was also accepted by him that Defendant No. 6, R.B. Roadways, was required to hand over the consignment to Defendant No. 7. Additionally, DW 1 acknowledged that payments relating to the export shipments had been completed in respect of both Defendants Nos. 6 and 7.

24. Furthermore, DW 1 admitted that the Plaintiff Company had issued a Letter of Authorization in favour of Mr. Prasanta Sarkar, who represented P.K. Ghosh and Sons. He maintained that P.K. Ghosh and Sons acted as the carrying and forwarding agents (Customs House Agents), and that the issuance of such a letter was legally required. Further when asked about discrepancies in the documents made by the defendant no. 6 during the transit (Q.76), he stated that one of the discrepancies was the truck receipt of Jain Parivahan- "*This is because defendant no.6 had said that they do not have requisite Indian banking association approval to export*

the goods. So they worked under J.N. Parivahan with some understanding." DW 1 further maintained that the issue regarding the association between Defendant No. 6 and Jain Parivahan was raised only after the transportation of goods had already taken place. He also explained that the only discrepancy raised was by the importers' negotiating bank. No additional discrepancies were highlighted at the time. It was only after a lapse of approximately six months that Islami Bank reported that their clients, i.e., Defendants Nos. 2 and 3, had not received the goods.

25. DW 2 Rajesh Chura, Vice President of Dalgreen Ltd. testified that R.B. Roadways was engaged by the plaintiff to transport goods from a source determined by plaintiff nos. 4 and 5 to the destination specified in the Letter of Credit, which was Bhomra Port, Bangladesh. He confirmed that defendant no. 6 was authorized to take the goods from Ghojadanga Port in India but clarified that, as per the oral agreement, R.B. Roadways was responsible for deliveries.

26. He acknowledged that defendants nos. 2 and 3 had stopped payment, claiming they did not receive the goods, and confirmed that a suit had been filed by them in Bangladesh. Chura asserted that defendants nos. 2 and 3 had received the goods, citing a police complaint and a letter from the Assistant Commissioner of Customs and Excise at Ghojadanga, which confirmed the goods had crossed into Bangladesh (Exhibit S). He alleged that the necessary documents were tampered with in Bangladesh, possibly in connivance with defendants nos. 1 to 8, but could not

definitively state where the tampering occurred. He maintained that defendant no. 7 had handed over the goods to defendant no. 8. He confirmed visiting Bangladesh after filing the police complaint at Bhowanipur Police Station and stated that the plaintiff had lodged a complaint against defendants nos. 2 and 3 with the High Commission of India in Dhaka, which had taken some action. Although he confirmed that the police complaint at Bhowanipur Police Station led to an FIR he did not know if the FIR specifically named defendants nos. 6 and 7.

27. When questioned about Md. Zakir Hossain of Raj Traders, he stated he had not met him but knew he was a clearing agent for defendants nos. 2 and 3 at Bhomra Port. He acknowledged the plaintiff had made payments but disagreed that defendant no. 7 had fully performed its duties.

28. The plaintiff's COO (PW1) testified that the plaintiff was not involved in selecting either the transporter or the customs agent and that the entire logistical chain was managed by Defendant Nos. 1 to 5 (PW1). The substitution of R.B. Roadways for Jain Parivahan was only revealed after the goods had been dispatched. Importantly, Indian Customs endorsements confirmed that the goods had exited Indian territory at Ghojadanga and entered Bangladesh. Despite this, the importers, Defendants Nos. 2 and 3 denied receipt of goods via SWIFT messages (Exhibit Q, R, S with objection), and simultaneously issued legal notices dated 17th January, 2016 claiming damages for non-compliance under the trading agreement.

29. The present appeal has been filed only by the defendant nos. 6 and 7 who are the appellant no.1 and 2 herein. The appellants have assailed the impugned judgment primarily on the ground that they were wrongly held liable for acts beyond their limited operational roles.

30. The defendant No.6/appellant no.1, Firoz Aktar Baidya has in his written statement stated that he was engaged by one LNC Agro Mills to transport the consignment from the mill in Burdwan to the Ghojadanga border in due course of business on “to pay” basis and such was handed over to the defendant no. 7/appellant No. 2 who was the CNF agent of the plaintiff. It was also admitted that since he was not an Indian Bank’s Association approved transporter, the consignment had been transported in the defendant’s trucks under the consignment note of one “Jain Parivahan” which was a Bank approved transporter and such note was organised by the defendant no. 7. It was emphasised that since the trucks of the defendant no. 6 loaded with the consignment had all crossed the border and since the bills raised upon the plaintiff had been duly paid without any demur or objection, the obligation of the defendant had been discharged. In his affidavit of evidence Firoz has reiterated the contents of his written statement.

31. The defendant no. 6 had examined himself as a witness. During his cross-examination Firoz claimed that a person on behalf of the defendant no. 4 Ajay Chowdhury had assigned the work on behalf of PSA Enterprise to shift the goods of the plaintiff from Burdwan to Ghojadanga.

32. He further stated that PSA Enterprise had on behalf of the plaintiff received the consignment from RB Roadways at Ghojadanga and one Prasanta, the proprietor of PSA Enterprise had told him that Jain Parivahan was a bank approved proprietor. He also stated that he had seen the consignment cross the Ghojadanga border and subsequently he had prepared bills and submitted them to the plaintiff for payment. The relevant portions of the deposition of Firoz have been reproduced below for convenience:

> "*33. In paragraph 4 of your affidavit of evidence you have said that all the trucks have crossed the border Is it so?/ When Prasanta had received the gate passes the trucks had crossed the border. Then when the trucks had come back they had submitted the receiving challan. Then we had prepared a bill and submitted it to Dalgreen. Then they used to pay me through cheque.*
>
> *34. So, you are aware personally and have seen the consignment cross the border- Am I correct ?/ Yes, I have seen the consignment crossed the border. After giving the gate pass the drivers entered Bangladesh. After unloading the consignment the drivers gave me back the challans. Then through this challan I prepared a bill. Then Dalgreen used to pay me through cheque after I submitted the challans to them. The dates are written behind the challans on which I have submitted the challans. Then may stamped and received the challans.*"

33. The defendant no. 7 in his written statement stated that it was a recognised clearing and forwarding agent duly registered with the customs authorities at Kolkata and the plaintiff had appointed him as its CNF agent for export to Bangladesh. It was also been specified that the assignment of this defendant was limited to getting documents passed by the Indian Customs at Ghojadanga, to receive and get the consignment passed by Indian Customs and after the documents were cleared to forward the documents and consignment to the CNF agent of the importers (defendant nos. 2 and 3), being the defendant no. 8 herein. Thereafter it is the duty of the CNF agent of the importer to get the documents passed and consignment checked by the Bangladeshi customs, send back the documents to the CNF agent of the exporter and deliver the consignment to the importer and forward the documents to the exporter for submitting it to the Bank. It was also mentioned that the defendant no. 7 has acted through one Prasanta Sarkar, the deponent herein on the basis of authority conferred by the plaintiff and has rendered services only as the CNF agent of the exporter. The documents were supposedly prepared by the plaintiff and forwarded to Prasanta Sarkar who got the documents passed by the Indian Customs at Ghojadanga. Furthermore, defendant no. 7 was known to defendant nos. 2 or 3 and there was no agreement between these parties.

34. The defendant no. 7 had adduced one witness in support of his claim, namely his constituted attorney, Prasanta Sarkar.

35. In his affidavit of evidence, Prasanta Sarkar has stated that the assignment of the defendant no. 7 was restricted to getting the documents passed by the Indian Customs at Ghojadanga and to get the consignment passed by Indian customs and after the documents were clear to forward the documents and the consignment to the clearing and forwarding agent of the importer, that is the defendant no. 8. He also stated that after receiving the documents prepared by the plaintiff, he had got such documents passed by the Indian Customs and the consignment was also checked and forwarded to the defendant no. 8 for making delivery to the importers. The exports between the plaintiff and defendant nos. 2 and 3 were made in terms of the Letters of Credit from Ghojadanga Port. Apart from reiterating the contents of the written statement, Prasanta also stated that he had acted diligently and had also been paid his remuneration for the service rendered to the plaintiff.

36. Mr. Shuvasish Sengupta, learned Counsel appearing on behalf of the appellants has assailed the said judgment primarily on the ground that so far as the present appellants are concerned, the claim is on account of damages whereas the decree would show that they were held liable for the price of the goods sold and delivered. They were not the purchaser. The plaintiff has failed to establish that all the defendants have the same character and they have a joint liability to discharge. It is submitted that the learned Single Judge while recording that it was primarily a breach of the defendant nos. 1 to 5 and in spite of the fact that

the goods had crossed the border and the importer had received the goods, had held that the negligence of the defendant Nos. 6 & 7 is established. If it were a claim on account of negligence they would possibly have had limited liability on account of damages that could have been assessed. The said defendants have acted bonafide and had merely discharged their function and duties entrusted upon them.

37. Mr. Sengupta has referred to the plaint in extenso to show that the plaintiff has made an attempt to establish fraud on the part of the defendants which include the defendant Nos.6 and 7 (the present appellants) but had failed to particularize the said fraud or to establish at the trial that there has been a fraud perpetrated by the said defendants along with the other defendants. Having regard to the fact that the goods have been delivered to the accredited CNF Agent of the importer at Bangladesh the question of any fraud of the present appellants could not and does not arise.

38. Mr. Anirban Ray, learned Senior Counsel appearing on behalf of the plaintiff/respondent herein has supported the impugned judgment and has argued that the said appellants have connived with the other defendants in causing loss and damage to the plaintiff and it was because of their acts and conduct that the Letters of Credit were not honoured and the plaintiff was deprived of the price of the goods sold and delivered.

39. The argument of Mr. Sengupta, at the first blush may appear to be attractive as an impression is sought to be created that the appellants were innocent, but as we delve into the pleadings and the evidence on record, the acts and conduct become curiouser and curiouser, as they have entered into a web of fraud very nicely knitted from which it is difficult for them to escape. The first interesting point which raised our curiosity is the appeal being filed jointly by the defendant Nos. 6 and 7 although they have filed their separate written statement. Both of them wanted to take a separate stand at the trial. The defendant No. 6 was selected by the defendant Nos. 1, 4 and 5 as would appear from Clause III of the oral agreement that was agreed upon between the parties. The oral agreement has been proved. We have not come across any evidence to rebut the said clauses on behalf of the defendants. On the aforesaid basis we have to see the conduct of the defendant No. 6. The defendant No. 6 has made a specific averment in paragraph 6 of the written statement with regard to the transportation of rice from the mill from Burdwan to Ghojadanga which reads as follows :-

> *"In the usual course of business, one LNC Agro Mills Private Limited, as the manufacturer and Supplier of Rice, appointed this defendant as its transporter for the purpose of transporting Rice from the Mill in Burdwan to Ghojadanga-Bhomra border on "to pay" basis for the purpose of export made by the plaintiff. This defendant handed over the consignment to the Clearing & Forwarding Agent of the plaintiff at Ghojadanga Border being the defendant No. 7 herein. As this defendant is not a Bank approved transporter, all the trucks of this*

defendant loaded with the consignment crossed the border under the consignment note of "Jain Parivahan", which is Bank approved transporter and the said consignment note was organized by the defendant No. 7 herein. Apart from what has been stated in this paragraph, this defendant has no further obligation to follow. All the trucks carrying the consignment of this defendant has crossed the Border and the obligation of this defendant was completely fulfilled This defendant thereafter raised the bills upon the plaintiff and the same has duly been paid by the plaintiff without any demur or objection. This defendant states that surprisingly this defendant has been made a party to the proceedings but "Jain Parivahan" is conspicuously absent from the list of defendants."

40. The defendant no. 7 in paragraph 5 of the written statement while acknowledging that he was appointed as clearing and forwarding agent for the purpose of export of rice and wheat of the plaintiff to Bangladesh has stated as follows :-

> *"This defendant is a recognized Clearing & Forwarding Agent duly registered with the Customs Authorities at Kolkata and in the usual course of business, the plaintiff has appointed this defendant as its Clearing & Forwarding Agent for the purpose of export made by the plaintiff to Bangladesh at Ghojadanga Bhomra Border. As such Clearing and Forwarding Agent, the assignment of this defendant was restricted to getting the documents passed by the Indian Customs at Ghojadanga, receive and get the consignment passed by Indian Customs and after the documents are cleared, forward the documents and the consignment to the Clearing and Forwarding Agent of the Importer and in this case, the defendant No. 8 is the Clearing and Forwarding Agent of the Importers being defendants No. 2 and 3. The Clearing and Forwarding Agent of the*

Importer thereafter gets the documents passed and consignment checked by the Bangladesh Customs, the documents are forwarded back to the Clearing and Forwarding Agent of Exporter and the consignment is delivered to the importer. The Clearing and Forwarding Agent of the Exporter then forwards the documents to the Exporter for submitting the same to Bank. Apart from what has been stated in this paragraph, this defendant has no further obligation to follow. A copy of the Authorisation letter issued by the plaintiff to this defendant is enclosed herewith and marked with Letter "A"."

41. Firoz Akhtar Baidya, D.W. 1 in his cross examination has stated as follows :-

"Yes, I have seen the consignment crossed the border After giving the gate pass the drivers entered Bangladesh. After unloading the consignment, the drivers gave me back the challans. Then through this challan I prepared a bill. Then Dalgreen used to pay me through cheques after I submitted the challans to them. The dates are written back of the challans on which I have submitted the challans. Then they stamp and received the challans."

42. The aforesaid pleadings and the evidence of DW 1 in cross-examination have been considered by the learned Single Judge in deciding the issue. There is no dispute that the goods sought to be supplied by the plaintiff had crossed the border and reached Bangladesh. DW 2 Prasanta Sarkar admitted that he was involved in transportation and had made over the relevant documentation to the defendant no. 8 acting as the CNF agent on behalf of the importers defendants No. 1,2 & 3. In the cross-examination DW 2 has also stated that he had no responsibility after the goods crossed

the border. The defendant Nos. 6 and 7 have both admitted that defendant No. 6 is not the bank approved transporter but had transported the goods and crossed the border under the consignment note of Jain Parivahan which is the bank approved transporter and which ought to have been the transporter for the purpose of transportation of the goods under the Letters of Credit. The evidence of the defendant Nos. 6 and 7 have clearly established that they had knowledge that the defendant no. 6 was not the bank approved transporter and has used the consignment note of Jain Parivahan at the time of handing over the documents at the border for facilitating the delivery of goods to defendant No.8 the CNF agent of the importers, defendant Nos. 1,2 and 3 in Bangladesh.

43. A few of the documents exhibited by the plaintiffs were marked with objection and we have referred to the said documents in the foregoing paragraphs. However, nothing much turned on objection being raised with regard to the said documents being marked as exhibits. The discrepancy for which the negotiating bank of the importer had refused to honour the payment under the LC is fortified by the evidence adduced and established by the plaintiff at the trial and the present appellants have failed to give any plausible explanation for their acts and conduct that had resulted in non-payment of the price of the goods sold and delivered.

44. Moreover, the actual delivery of goods along with the documents to the defendant No. 8 had also not been established. The onus was on the appellants to prove delivery of goods to the importer. The

products were transported to Ghojdanga Port into the hands of Appellant No. 2/Defendant No. 7 who had admittedly forwarded the same into the hands of the Customs House Agent of Defendant No. 3 & 4 namely Raj Traders, who is the Defendant No. 8.

45. Crucially, Defendant No. 6 has failed to produce any authenticated or verifiable documentation evidencing delivery of the goods to the consignee in Bangladesh. This omission is not trivial. In a transaction where payment was conditional on confirmation of delivery, the transporter's failure to preserve documentary proof materially compromised the plaintiff's ability to enforce its rights under the Letters of Credit.

46. Given that Defendant No. 6 facilitated the physical transfer of goods under documentation later shown to be forged, its failure to exercise minimal diligence in verifying the legitimacy of those documents or in maintaining proof of delivery amounts to more than mere oversight and there seems to be more than what meets the eye. It is undisputed that as the defendant nos. 6 and 7 owed the Plaintiff a duty of care and a fiduciary responsibility to act in good faith which it has failed to prove as per the material on record.

47. The appellants have failed to establish that the appointment of defendant No. 6 to transport the goods by using the name "Jain Parivahan" was with the consent of the plaintiff or that the defendant No. 7 has acted on the instruction of the plaintiff to allow the defendant No. 6 to

transport the goods under the name of "Jain Parivahan". These facts have not been established or proved at the trial by the defendant Nos. 6 and 7.

48. On the aforesaid facts and evidence the learned Single Judge has made the following observation :

> *"The other defendants were also had the knowledge that the defendant No. 6 is not the approved transporter but have allowed the defendant No. 6 to transport the goods to the Bangladesh border under the consignment of "Jain Parivahan" and thus it is proved that the defendants are inconnivance with each other and committed fraud upon the plaintiff by transporting the goods to the transporter which was not the approved transporter and used consignment note of Jain Parivahan due to which the payment was denied to the plaintiff.*
>
> *It is also proved from the evidence that since inception the defendants have conspired to cheat the plaintiff and committed the fraudulent act as the rice and wheat exported by the plaintiff was duly received at the Bangladesh border which was confirmed by the Custom Authorities of both the countries but in spite of receipt of the said consignment the defendants failed to pay the amount to the plaintiff on the ground that the goods were not transported through bank's approved transporter.*
>
> *On the other hand, the defendant nos. 2 and 3 have admitted that the shipment under Letters of Credit No. 086815010387 dated 23rd April, 2017, Letter of Credit No. 086815010278 dated 19th March, 2015 and No. 086815010322 dated 2nd April, 2015 were duly completed and payment has also made under the said Letters of Credits."*

49. At the trial it has been established beyond any doubt that the plaintiff had no knowledge whether the consignment was transported through the approved transporter of the Indian Bank's Association or not.

50. That the consignments had been transported and handed over to defendant No.8 as claimed by the present appellants however could not be substantiated. The defendant No. 8 acted on behalf of defendant Nos. 2 and as contended by the appellants the consignment was delivered to the said defendant no.8 who had received the consignment in the capacity of a CNF agent of the defendant Nos. 2 and 3.

51. The learned Counsel for the appellant has relied upon the decision of ***Union of India v. M/s. Chaturbhai M. Patel & Co.***[1] to argue that it is well settled that fraud like any other charges of a criminal offence whether made in civil or criminal proceedings must be established beyond all reasonable doubt. Every artifice and contrivance hatched in darkness and secrecy should not be insisted to be meticulously established to succeed in a plea where fraud is alleged. It is the cumulative effect of all the facts and evidence which when put together helps in determining whether there was any fraudulent intent and if the plaintiff has suffered due to such fraud. To borrow the illuminating passage from ***Satish Chandra Chatterji & Ors. v. Kumar Satish Kantha Roy & Ors.***[2] authored by Lord Atkinson:

> *"Suspicions and surmises and conjecture are not permissible substitutes for those facts or those inferences, but that by no means*

[1] 1997 (1) SCC 747
[2] 1923 Supreme (SC) 19; 1923 AIR (PC) 73

> *requires that every puzzling artifice or contrivance resorted to by one accused of fraud must necessarily be completely unraveled and cleared up and made plain before a verdict can be properly found against him. If this were not so, many a clever and dexterous knave would escape".*

52. The aforesaid passage has lucidly explained the duty of the court in deciding cases where fraud and collusion are not to be completely unraveled and cleared up to return a finding in favour of the plaintiff.

53. In the instant case the plaintiff had failed to realize the price of goods sold and delivered as the negotiating bank of the defendant Nos. 2 and 3 i.e. Islami Bank of Bangladesh Limited had refused to negotiate the Letter of Credit in view of breach of clause 46A(15) of Letter of Credit (Exhibit D), where it is mentioned that "goods carried by truck and truck operator/driver should be approved by Indian Bank's Association. A certificate to this effect must accompany the original documents." Both the defendant Nos. 6 and 7 have admitted the said breach as the defendant No. 6 used the name of Jain Parivahan without the authority or approval of the plaintiff. Similarly, the defendant No. 7 has also acted beyond its authority in accepting a document produced by the defendant No.6 as a CNF Agent. The defendant No.7 knew or ought to have known that the said documents are not acceptable and contrary to the agreement. Their acts and conduct had only benefitted the Bangladesh importer in avoiding the liability as also the negotiating bank appointed by the importer. Even if it is assumed for the sake of argument that they might not be party to the fraud but they

cannot escape their liability as they have acted beyond their authority that had resulted in the plaintiff suffering loss and damages for their acts and conduct.

54. Viewed either way, the culpability of the appellants for their acts and conduct resulting in a loss to the plaintiff is required to be compensated and the price of the goods sold and delivered would be a reasonable estimate of the loss that the plaintiff would suffer by reason of their acts and conduct.

55. In view thereof, we do not find any reason to interfere with the decree passed by the learned Single Judge.

56. Hence, the appeal is dismissed.

57. There shall be no order as to costs.

58. Certified photocopy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

I agree, **(Soumen Sen, J.)**

(Apurba Sinha Ray, J.)