

State Bank Of India & Anr vs M/S. Emmsons International Ltd. & Anr on 18 August, 2011

Equivalent citations: AIR 2011 SUPREME COURT 2906, 2011 (12) SCC 174, 2011 AIR SCW 4810, 2012 (1) AIR JHAR R 247, (2011) 5 MAD LW 711, (2011) 107 ALLINDCAS 83 (SC), (2011) 4 CIVILCOURTC 819, (2011) 4 RECCIVR 662, (2012) 1 MAD LJ 701, (2012) 1 RAJ LW 93, (2011) 2 CLR 558 (SC), (2011) 5 CAL HN 333, (2011) 4 BANKCAS 244, (2011) 3 KER LT 143, AIR 2011 SC (CIVIL) 2094, (2011) 4 KCCR 466, (2011) 5 ALL WC 5310, (2011) 89 ALL LR 487, (2011) 9 SCALE 68, (2011) 4 ICC 846

Author: R.M. Lodha

Bench: R.M. Lodha, Aftab Alam

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1709 OF 2007

State Bank of India & Anr.

.... Appellants

Versus

M/s. Emmsons International Ltd. & Anr.

.... Respondents

JUDGMENT

R.M. Lodha, J.

This civil appeal, by special leave, is from the judgment and decree of the Madhya Pradesh High Court whereby the Division Bench of that Court allowed the first appeal of the present 1st respondent--M/s. Emmsons International Ltd.--and set aside the judgment and decree of the trial court (First Additional District Judge, Bhopal) and decreed the 1st respondent's monetary claim.

2. Unialkem Fertilizers Limited--2nd respondent in this appeal (hereinafter referred to as 'the buyer') placed a purchase order on M/s. Emmsons International Limited (hereinafter referred to as 'the seller') for supply of 2000 MT of Syrian Rock Phosphate at the rate of Rs. 2100/- per metric ton for an aggregate amount of Rs.

43,86,411/-. The payment terms provided 'against 180 days issuance of letter of credit'. On June 18, 1997, at the request of the buyer, a letter of credit for Rs. 43,86,411/- was established by the appellant No. 1 -- State Bank of India, Industrial Finance Branch, Bhopal (hereinafter referred to as 'the issuing bank') in favour of the seller; the appellant No. 2 -- State Bank of India, New Delhi Main Branch, New Delhi being the advising Bank. The seller supplied the material vide sale invoice, high seas delivery, bills of lading, etc. and the buyer is said to have accepted the documents.

3. The letter of credit established by the issuing bank, inter alia, made the following stipulations:

" THIS DOCUMENTARY CREDIT WHICH IS AVAILABLE BY NEGOTIATION OF YOUR DRAFT AT 180 DAYS FROM DESPATCH DRAWN FOR 100.00% OF INVOICE VALUE ON UNIALKEM FERTILIZERS LTD., E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL, 462 016 BEARING THE CLAUSE "DRAWN UNDER DOCUMENTARY CREDIT NO. 0192097 LCo00087 OF STATE BANK OF INDIA, INDUSTRIAL FINANCE BRANCH, GR. FLOOR, L.H.O. PREMISES, HOSHANGABAD ROAD, BHOPAL - 462 011 (INDIA)." ACCOMPANIED BY DOCUMENTS LISTED IN ATTACHED SHEET (S) EVIDENCING DISPATCH OF GOODS AS PER THE ATTACHED SHEETS.

FOR LIST OF REQUIRED DOCUMENTS, MERCHANDISE DESCRIPTION AND OTHER INSTRUCTIONS PLEASE SEE THE ATTACHED CONTINUATION SHEETS WHICH FORM AN INTEGRAL PART OF THIS CREDIT.

SHIPMENT FROM : SYRIA TO KANDLA, INDIA SHIPMENT TERMS : CIF
PARTIAL SHIPMENT : ALLOWED TRANSSHIPMENT : NOT ALLOWED
INSTRUCTION TO THE ADVISING BANK:

- ALL BANK CHARGES (OTHER THAN ISSUING BANK CHARGES) ARE FOR ACCOUNT OF BENEFICIARY.

- DISCREPANT DOCUMENTS TO BE SENT STRICTLY ON COLLECTION BASIS.

- ALL DOCUMENTS TO INDICATE L/C NO.

0192097 LC 000087 AND DATE 18/06/97.

- NEGOTIATIONS UNDER THIS CREDIT ARE RESTRICTED TO STATE BANK OF INDIA, NEW DELHI, MAIN BRANCH, 11, SANSAD MARG, POST BOX NO. 430, NEW DELHI -

110 001.

- EXCEPT IN SO FAR AS OTHERWISE EXPRESSEDLY STATED THIS DOCUMENTARY CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (UCP) (1993 REVISION) OF THE INTERNATIONAL CHAMBERS OF COMMERCE (PUBLICATION NO. 500) WE HEREBY ENGAGE WITH DRAWERS AND/OR BONAFIDE HOLDERS THAT DRAFT DRAWN AND NEGOTIATED IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONOURED ON PRESENTATION AND THAT DRAFTS ACCEPTED WITHIN THE TERMS OF THIS CREDIT WILL BE DULY HONOURED AT MATURITY. THE AMOUNT OF EACH DRAFT MUST BE ENDORSED ON THE REVERSE OF THIS CREDIT BY THE NEGOTIATION BANK....."

(Emphasis supplied by us)

4. The terms of Letter of Credit were amended on June 23, 1997 to the following effect :

"AT THE REQUEST OF THE APPLICANT UNIALKEM FERTILIZERS LTD., E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL - 462 016. WE HAVE TODAY AMENDED OUR CAPTIONED LETTER OF CREDIT AS UNDER :

FIRST PAGE OF LETTER OF CREDIT LINE SECOND TO READ AS :
NEGOTIATION OF YOUR DRAFT AT 180 DAYS FROM THE DATE OF DELIVERY ORDER DATED 18/06/97 INSTEAD OF EXISTING PLEASE MAKE THE FOLLOWING AMENDMENTS TO ATTACHED SHEET NO. 1 OF L/C POINT NO. 01 TO BE DELETED POINT NO. 02 TO BE DELETED POINT NO. 04 TO READ AS COPY OF CERTIFICATE OF SYRIAN ORIGIN ISSUED BY CHAMBER OF COMMERCE INSTEAD OF EXISTING. POINT NO. 05 TO READ AS COPY OF CERTIFICATE OF QUALITY AND QUANTITY ISSUED BY CHAMBER OF COMMERCE INSTEAD OF EXISTING POINT NO. 12 TO READ AS DRAFT DRAWN UNDER THIS LETTER OF CREDIT ARE NEGOTIABLE BY THE STATE BANK OF INDIA, MAIN BRANCH, NEW DELHI AND ORIENTAL BANK OF COMMERCE, OVERSEAS BANK, NEHRU PLACE, NEW DELHI ALSO INSTEAD OF EXISTING.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED."

(Emphasis supplied by us)

5. On July 8, 1997, the issuing bank received negotiated documents under the letter of credit from Oriental Bank of Commerce (hereinafter to be referred as `negotiating bank') for payment. On that day itself, the issuing bank pointed out the following discrepancies to the negotiating bank :

(i) certificate from the negotiating bank mentioning all the terms of credit have not been furnished;

(ii) the certificate of Syrian Origin is not issued by Chamber of Commerce.

The issuing bank, thus, advised the negotiating bank to rectify the discrepancies within seven days of submission of documents.

6. Thereafter, between July 10, 1997 and February 7, 1998, the correspondence ensued through telegrams and letters between the negotiating bank and the issuing bank. According to the negotiating bank, the discrepancies notified by the issuing bank were rectified and the documents complied with the requirement of the credit. On the other hand, the issuing bank continued to insist that the documents were discrepant; the documents presented were not acceptable to it and it was holding the documents on collection basis at the risk and responsibility of the negotiating bank.

7. It was then that the seller brought an action by way of a summary suit for a decree in the sum of Rs. 63,74,356/- (principal amount of Rs. 43,86,411/- and interest of Rs. 19,87,945/-) together with the interest at the rate of 18 per cent per annum from the date of the suit to the date of decree and thereafter the interest at the same rate on decretal amount till realization against the issuing bank and the advising bank. The buyer was impleaded as a formal party.

8. The issuing bank (defendant no. 1) made an application for leave to defend which was granted by the trial court. The issuing bank then filed written statement justifying its action of not honouring the credit on diverse grounds, namely; (i) the certificate of origin issued by Chamber of Commerce was different from the certificate of origin dated March 30, 1997 issued by the supplier of the material;

(ii) neither the description of goods nor the quantity or weight matched with each other in the above documents; (iii) the certificate of origin has been issued in favour of MMTC and not in favour of the seller; (iv) at the request of the negotiating bank, the documents were retained by it but only on collection basis in order to remit the amount after collecting the same from the buyer and (v) it has acted in accord with Uniform Customs and Practice for Documentary Credits (for short, `UCP500').

9. On the pleadings of the parties, the trial court framed the following five issues :

have dishonoured the documents relating to the "letter of credit" against the rules and practice?

Issue No. 2. Whether applicant is eligible to get Rupees 43,86,411/- and 18 percent interest p.a. over it from respondent Nos. 1 & 2 on the basis of letter of credit given by them?

Issue No. 3. Assistance and expenses?

Issue No. 4	Whether respondent is eligible to
	get Rs. 14,258/- as
	handling/collection fee from
	applicant?

Issue No. 5. Whether applicant has accepted the encashment of bill and document on collection basis?"

It may be noted that trial court has referred to the seller as applicant and the issuing bank (defendant no. 1) and the advising bank (defendant no. 2) as respondent nos. 1 and 2 respectively.

10. The parties tendered oral as well as documentary evidence in support of their respective case.

11. The trial court after viewing the evidence and hearing the arguments held that the issuing bank has properly dishonoured the documents relating to the letter of credit and the seller was not entitled to get any amount or interest from the issuing bank and the advising bank on the basis of that letter of credit. The trial court has also concluded that seller accepted the encashment of bill and document on collection basis. In light of these findings, the trial court vide its decision dated February 4, 2002 dismissed the seller's claim.

12. The seller filed first appeal against the judgment and decree of the trial court before the High Court of Madhya Pradesh.

As noted above, the Division Bench of that Court allowed the seller's appeal and granted a decree to the seller as prayed in the suit.

13. The legal position appears to be fairly well-settled that a draft with accompanying documents must be in strict accord with the letter of credit. If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit. In *United Commercial Bank v. Bank of India and others*¹, this Court referred to few decided cases of the English Courts, *Halsbury's Laws of England* and also couple of books on the subject by eminent authors--*Davis' Law Relating To Commercial Letters of Credit*, 2nd Edn. (at page 76) and *Paget's Law of Banking*, 8th Edn. (at page 648)--and it was held that the documents tendered by the seller

must comply with the terms of the letter of credit and that the banker owes a duty to the buyer to ensure that the buyer's instructions relative to the documents against which the letter of credit is to be honoured are complied with.

It was stated that the description of the goods in the relative bill of 1 (1981) 2 SCC 766 lading must be the same as the description in the letter of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in fact, the same. The Court reiterated, `

a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit'.

14. Where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate.

15. Lord Diplock in Commercial Banking Co. of Sydney Ltd.

v. Jalsard Pty. Ltd.² stated at page 286 of the Report that the issuing banker and his correspondent bank have to make decisions as to whether a document which has been tendered by the seller complies with the requirements of a credit.

² (1973) AC 279

16. It needs no emphasis that a contract is concluded between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller. Under an irrevocable credit the issuing bank gives an unequivocal and binding undertaking to the seller that it will pay against documents/bills drawn in compliance with the terms of credit.

17. The relevant clauses of Articles 13, 14 and 19 of UCP 500 read as under:

"Article 13.

Standard for Examination of Documents a Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit.

Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.

b The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

c

Article 14.

Discrepant Documents and Notice

a

b Upon receipt of the documents the Issuing Bank

and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.

c If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgement approach the Applicant for a waiver of the discrepancy(ies). This does not, however, extend the period mentioned in sub. Article 13 (b).

d . i.

ii. Such notice must state all discrepancies in
respect of which the bank refuses the

documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter.

iii.

e If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit.

f

Article 19.

Bank-to-Bank Reimbursement Arrangements a

b Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank.

c

d

e"

18. In light of the above legal position, we heard Mr. R.K. Sanghi, learned counsel for the appellants and Mr. Shyam Divan, learned senior counsel for the 1st respondent for some time. In the course of hearing, however, it transpired that the High Court in its judgment that runs into 56 foolscap pages while reversing the judgment of the trial court, has not at all adverted to issue no. 5 framed by the trial court nor it considered or upset the finding of the trial court on that issue.

19. Mr. Shyam Divan, learned senior counsel for the seller - 1st respondent fairly stated that the finding on issue no. 5 recorded by the trial court has not at all been considered in the impugned judgment although, he strenuously urged that once the discrepancies on the basis of which the issuing bank refused the documents were rectified and the time allowed for encashment had expired, the issuing bank was obliged to honour the letter of credit and the case set up by the issuing bank that the seller had accepted the encashment of bill and document on collection basis was false and frivolous.

20. Having regard to the controversy set up by the parties in the course of trial, in our view, it cannot be said that issue no. 5 is immaterial or finding of the trial court on that issue is inconsequential. The High Court was hearing the first appeal and, as a first appellate court it ought to have considered and addressed itself to all the issues of fact and law before setting aside the judgment of the trial court. The judgment of the High Court suffers from a grave error as it ignored and overlooked the finding of the trial court on issue no. 5 that the seller accepted the encashment of bill and document on collection basis. The High Court was required to address itself to issue no. 5 which surely had bearing on the final outcome of the case.

21. In Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs.3, this Court held (at pages 188-189) as under :

".....The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. ... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it....."

22. The above view has been followed by a 3-Judge Bench decision of this Court in Madhukar and Others v. Sangram and Others⁴, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

3 (2001) 3 SCC 179 4 (2001) 4 SCC 756

23. In the case of H.K.N. Swami v. Irshad Basith (Dead) by LRs.5, this Court (at pages 243-244) stated as under :

"The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.....".

24. Again in Jagannath v. Arulappa and Another⁶ while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pages 303-304) observed as follows :

"2. A court of first appeal can reappraise the entire evidence and come to a different conclusion. In the present case, we find that the High Court has not adverted to many of the findings which had been recorded by the trial court. For instance, while dismissing the suits filed by the respondents, the trial court had recorded a finding on Issue 5 that the defendant-appellant had taken actual possession of the suit properties in Execution Petition No. 137 of 1980 arising out of OS No. 224 of 1978. Without reversing this finding, the High Court simply allowed the appeals and decreed the suits filed by the plaintiff-respondents in toto. Similarly, there are other issues on which findings recorded by the trial court have not been set aside 5 (2005) 10 SCC 243 6 (2005) 12 SCC 303 by the High Court. The points involved in the appeals before the High Court required a deeper consideration of the findings recorded by the trial court as well as the evidence and the pleadings on record."

25. The decided cases of this Court in Jagannath⁶ and H.K.N. Swami⁵ were noticed by this Court in a later decision in the case of Chinthamani Ammal v. Nandagopal Gounder and Another⁷.

26. In our view, the High Court failed to follow the fundamental rule governing the exercise of its jurisdiction under Section 96 of the Code of Civil Procedure, 1908 that where the first appellate court reverses the judgment of the trial court, it is required to consider all the issues of law and fact. This flaw vitiates the entire judgment of the High Court. The judgment of the High Court, therefore, cannot be sustained.

27. For the above reasons, we accept the appeal, set aside the impugned judgment of the High Court and restore First Appeal No. 225 of 2002 for re-hearing and fresh decision. All contentions of the parties are kept open to be agitated at the time of the hearing of the first appeal. No order as to costs.

7 (2007) 4 SCC 163J. (Aftab Alam) J.

(R.M. Lodha) NEW DELHI.

AUGUST 18, 2011.