Supreme Court of India
Centax (India) Ltd. vs Vinmar Impex Inc. And Ors. on 19 August, 1986
Equivalent citations: AIR 1986 SC 1924, 1987 61 CompCas 697 SC, JT 1986 (1) SC 175, 1986 (2) SCALE 254, (1986) 4 SCC 136, 1986 (2) UJ 559 SC
Author: A Sen
Bench: A Sen, B Ray
JUDGMENT A.P. Sen, J.

1. The short and narrow point involved in this appeal by special leave is whether upon the principles laid down in United Commercial Bank v. Bank of India and Ors. the Court should not interfere in a transaction between a banker and a beneficiary of a letter of guarantee or indemnity by grant of an injunction at the instance of the buyer restraining the beneficiary from enforcing the liability under the letter of indemnity executed by the banker which was absolute and upon a demand being made by the beneficiary the bank became liable to honour the same, regardless of any controversy between the parties i.e. the appellant who is the buyer, and respondent No. 1, the sellers, as to whether the contract of sale had been performed.

2. Briefly stated, the facts are that the appellant, the buyer, covenanted to purchase and respondent No. 1 Messrs Vinmar Impex Inc., Singapore, the sellers, agreed to sell and supply 100 M.T. of High Density Polythene Powder called HOPE @ $565 per M.T. CIF, Calcutta on an irrevocable letter of credit being opened by the appellant in favour of respondent No. 1, the sellers. One of the terms of the contract as per the letter of intent dated April 29,1985 signed by both the parties pertained to the 'shipping mark' and was to the effect: "Bills of lading should mention shipping mark 5202". Pursuant thereto, at the request of the appellant, the Allahabad Bank opened a letter of credit for $ 56,500 valid up to June 30,1985 in favour of respondent No. 1. In terms of the said agreement, respondent No. 1 Messrs Vinmar Impex Inc., Singapore, despatched 100 M.T. HOPE Granules from on board the vessel 'Ganges Pioneer' packed in four containers of 25 M.T. each covered by four bills of lading. The said vessel 'Ganges Pioneer' arrived at the Calcutta Port on or about the June 5,1985 and despatched the goods covered by the said bills of lading.

3. It appears that the parties entered into a correspondence due to the failure on the part of respondent No. 1 to forward, through Bank, the original bills of lading, marine insurance policy, signed invoices etc. to enable the appellant to take delivery. Since the Shipping Company was refusing to release the cargo for want of the original bills of lading and other documents, respondent No. I instructed them to release the said cargo upon the appellant furnishing bank guarantee for release of the goods in lieu of the original bills of lading and other documents. Accordingly, the Allahabad Bank, at the instance of the appellant, executed four letters of indemnity, variously described as letters of guarantee or letters of indemnity or both, and each of the documents has been countersigned by the appellant in favour of the Shipping Company. On the strength of the said letter of indemnity the Shipping Company delivered the goods to the appellant without production of the original bills of lading, marine insurance policy signed invoices etc. After taking delivery of the goods, the appellan sold them in the market and realised the proceeds amounting to Rs. 17,50,000. The Shipping Company having made a demand upon the Allahabad Bank to honour the letters of indemnity and the Bank having called upon the appellant to pay the amount due, the appellant

brought a suit in the Original Side of the Calcutta High Court seeking to recover Rs. 9,25,020.80p. as damages from respondent No. 1, the sellers alleging that they were in breach in that the goods despatched by respondent No. 1 were of inferior quality and not the goods contracts for i.e. not of grade 5202 but of grade 5502, and also because they had failed to forward the original shipping documents. The appellar applied for grant of a temporary injunction under Order XXXIX, Rule 1 of the CPC, 1908 restraining the Allahabad Bank from making any payment to the Shipping Company in terms of the letters of indemnity and also restraining respondent No. 1 from recover ing the amount due thereunder.

4. The High Court has disallowed the application made by the appellant for grant of a temporary injunction on the ground that the requirements of Order XXXIX, Rule 1 of the Code are not fulfilled. A learned Single Judge by his order dated November 25, 1985 held that the appellant had no prima facie case, the balance of convenience do not require the grant of an injunction and that the refusal of such injunction would not put the appellant to any irreparable loss. In coming to the conclusion, the learned Judge observed that prima facie it does not appear that the figure 5202 or 5502 pertained to the grade or quality of the goods contracted for but to 'shipping mark' of the goods as evident from the letter of intent. He further observed that despite knowledge of the goods being of a different mark or grade, as alleged in the plaint, the appellant took delivery of the goods and sold them for Rs. 17,50,000 and appropriated the proceeds. He also observed that even assuming that the appellant had suffered the damages, it has assessed the same at Rs. 9,25,020. 80p., there still remained a clear margin of over Rs. 8 lakhs in the hands of the appellant on account of the sale price of the goods, the agreed price of the siad goods being Rs. 6,90,000. The learned Judge felt that there was no reason why the appellant should retain the entire sale proceeds amounting to Rs. 17,50,000 and pay nothing to respondent No. 1 towards the price. A Division Bench of the High Court by its judgement dated February 3, 1986 upheld the order of the learned Single Judge. The learned Judges, in the course of their reasoned judgement, referred in detail to the relevant documents as also to various authorities, including the decision of this Court in United Commercial Bank's case and held that the obligation of the Allahabad Bank under the letters of indemnity countersigned by the appellant was absolute and upon a demand being made by the Shipping Company i.e. the beneficiary, the Bank was liable to honour the same regardless of any controversy between the parties i.e. the appellant who is the buyer, and respondent No. 1 the sellers, as to whether the contract of sale had been performed. We agree with the reasoning and conclusions of the learned Judges. In the instant case, the appellant took the risk of unconditional wording of the letters of indemnity executed by its bankers, the Allahabad Bank. There is really no equity in favour of the appellant. The Shipping Company on the faith and assurance of the letters of indemnity which was duly counterisgned by the appellant, gave delivery of the goods without production of the original shipping documents. The appellant have sold the goods and realised the proceeds amounting the huge sum of Rs. 17,50,000 and have not paid a farthing to respondent No. 1, the sellers, and have instead brought the instant suit claiming that the goods supplied were of inferior quality and not the goods contracted for. The High Court has rightly held that the mark 5202 pertained not to the quality of the grade but to the shipping mark. We are satisfied that the appellant has no prima facie case. The balance of convenience also lies in not granting the injunction prayed for i.e. in allowing the banking transaction to go forward. The appellant would also not be put to any irreparable loss if no injunction is granted.

5. This case is really an extension of the principles laid down by this Court in United Commercial Bank's case. The main point in controversy in that case was whether the Court should in a transaction between a banker and banker grant an injunction at the instance of the beneficiary of an irrevocable letter of credit, restraining the issuing bank from recalling the amount paid under reserve from the negotiating bank, acting on behalf of the beneficiary against a documents of guarantee indemnity at the instance of the beneficiary. In dealing with the nature of a banker's obligation under an irrevocable letter of credit, the Court observed:

In view of the banker's obligation under an irrevocable letter of credit to pay, his buyer customer cannot instruct him to pay. In Hamzeh Malas v. British Imex Industries Ltd. (1958) 2 QB 127, the plaintiffs,the buyers, applied for an injunction restraining the sellers, the defendants, from drawing under the credit established by the buyer's bankers. This was refused, Jenkins. LJ stating at p. 12 that:

...the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods which imposes on the banker an absolute obligation to pay...and that 'this was not a case in which the Court ought to exercise its discretion and grant the injunction.

The Court held that the same considerations should apply to a bank guarantee, and added :

A letter of credit sometimes resembles and is analogous to a contract of guarantee. In Elian v. Matsas (1966) 2 LR 495, Lord Denning, M R, while refusing to grant an injunction stated:

...a bank guarantee is very much like a letter of credit. The courts will do their utmost to enforce it according to its terms. They will not, in the ordinary course of things, interfere by way of injunction to prevent its due implementation.

It was observed that commitments of banks must be allowed to be honoured free from interference by the courts. Otherwise, trust in international commerce would he irreparably damaged. The Court referred to, with approval, the following observations of Kerr, J. in Section 4D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.

It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the lifeblood of international commerce.

And added:

Except possibly in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts.

6. We do not see why the same principles should not apply to a banker's letter of indemnity.

7. Accordingly, the appeal must fail and is dismissed with costs.