

United Commercial Bank

Vs

Bank of India and Others

Civil Appeal No. 132 of 1980

(A.C. Gupta, A.N. Sen JJ)

26.03.1981

JUDGMENT

A. P. SEN, J. -

1. This appeal by special leave is from an order of the Bombay High Court dated August 24, 1979, granting a temporary injunction restraining the appellant, the United Commercial Bank. By this order the appellant has been restrained from making a recall of a sum of Rs. 85,84,456 paid by it under reserve against the relative bills of exchange drawn against the letter of guarantee or indemnity 1, the Bank of India, and in terms of the letter of guarantee or indemnity executed by that Bank, in a suit based on a banker's letter of credit.

2. The facts are somewhat complicated, but it is necessary to disentangle the facts to bring out the point of law involved.

3. Respondent 2, Messrs., Godrej Soaps Limited, hereinafter referred to as 'the plaintiffs', by a contract dated February 2, 1978 agreed to supply to respondent 3, the Bihar State Food and Civil Supplies Corporation Limited, hereinafter referred to as 'the Bihar Corporation', on thousand metric tonnes of 'Sizola Brand pure Mustard Oil' the total value of which was approximately Rs. 86 lacs, packed in brand new leakproof 62,040 tins of net 16 kg. each at the rate of Rs. 137 per tin. The contract provided inter alia that the Bihar Corporation were to open a letter of credit with the appellant, the United Commercial Bank, of the said amount, which the Bihar Corporation duly did.

4. The letter of credit issued by the appellant was in the following terms :

#United Commercial Bank Nariman Point Branch United Commercial Bank Frazer Road, Patna Branch, June 13, 1978 Office : Melbourne Road, Calcutta-1. To M/s. Godrej Soaps Ltd., Eastern Express Highway, Vikhroli, Bombay 400 079. Dear Sirs, Letter of Credit No. 1/78##

At the request of Bihar State Food & Civil Supplies Corporation Ltd., Patna, we hereby establish our confirmed irrevocable Letter of Credit in favour of your goodself for account of Messrs. Bihar State Food & Civil Supplies Corporation Ltd., East Boring Road, Patna, for any sum or sums not exceeding in all Rs. 86,00,000 (say rupees eighty six lakhs only) outstanding at anyone time available by your drafts at sight drawn on Messrs. Bihar State Food & Civil Supplies Corporation Ltd. without recourse to drawers for full invoice value of merchandise to be described in the invoice as : 62,040 tins of Sizola Brand Pure Mustard Oil packed in brand new leakproof tins of net W. 16 kgs. Each @ Rs. 137 (rupees on hundred thirty-seven only) per tin. Despatched from Bombay

accompanied by the following documents :

(i) Signed detailed invoices in duplicate.

(ii) Railway Receipts consigned to or endorsed in favour of UNITED COMMERCIAL BANK marked 'FREIGHT/TO PAY' evidencing dispatch by Railway of the merchandise as dated above.

Signed Delivery Order on your godown at.... fvg. United Commercial Bank covering the delivery of the above-mentioned merchandise.

(iii) Insurance Policies or Certificate covering usual transit risks and rail issued in duplicate and endorsed in blank by transit Insurances at the costs of openers not exceeding one per cent of value of goods to be effected by beneficiary and to be included in the invoice.

Railway Receipt/Delivery Order must be dated not later than July 13, 1978.

Bills of Exchange must be dated and negotiated not later than July 20, 1978.

Sd/- Accountant Sd/- Manager##

5. The schedule annexed specified the various destinations to which the goods were to be despatched.

6. Between June 22, 1978 and June 26, 1978, the plaintiffs from time to time despatched an aggregate of 24,400 tins of their mustard oil by invoices bearing Nos. 4501 to 4520 of the aggregate value of Rs. 36, 52, 960 to various destinations mentioned in the schedule annexed to the letter of credit. Between June 27 to July 1, 1978 the plaintiffs further despatched an aggregate of 23,0680 tins of the said goods covered by invoices Nos. 4521 to 4539 of the aggregate value of Rs. 34,70, 312. On July 7 and 8, 1978 the plaintiff also despatched an aggregate of 10,560 tins covered by invoices Nos. 4540 to 4547 of the Aggregate value of Rs. 14, 61, 184.

7. The plaintiffs presented the documents for payment of Rs. 85,84,456 in two lots. There were twenty sets of documents in the first lot, the total value of which was Rs. 36,52,960, the second lot in 27 sets of the total value of Rs. 49,31,496. The first lot consisted of four sets of the value of Rs. 7.30 lacs, seven sets of Rs. 12.78 lacs, five sets of Rs. 9.13 lacs and four sets worth Rs. 7.30 lacs; the second of 27 sets, consisting of 19 sets of Rs. 34.17 lacs and 8 sets of Rs. 14.16 lacs. It is these two lots of documents which are subject-matter of the suit.

8. When the documents were presented by the plaintiffs for payment of Rs. 36,52,960 against the first lot of 20 sets, and Rs. 49,31,496 against the second lot in 27 sets, the appellant, United Commercial Bank refused to make payment 'except under reserve' on the ground of 'discrepancies'. The main discrepancy was that the goods were described in the railway receipts as "Sizola Brand Pure Mustard Oil 'Unrefined'". The plaintiffs accordingly instructed the bankers, the Bank of India to accept payment of Rs. 36,52,960 against the first lot of documents 'under reserve. The appellant accordingly made in aggregate payment of Rs. 36,52,960 to the Bank of India, that is, the negotiating bank, by three cheques of Rs. 7,30,502 Rs. 12. 12.78,636 and Rs. 16,43,832. It is significant to note that the Bank of India in their turn credited the account of the plaintiffs, who were their constitutions, also ' under reserve, with specific notation that 'it was paid under reserve on

account of discrepancies.'

9. As regards the second lot comprising of 27 sets of documents, 19 sets were presented by the plaintiffs on July 3, 1978, with sight drafts of Rs. 1,82,648 each along with bills of exchange together with the relevant documents. On July 5, 1978 the appellant addressed a letter to the plaintiffs refusing to make any payment under the letter of credit die to clearly stated by the appellants : "We are unable to negotiate the documents and are returning the same to you. However, if you so desire, we shall send the documents on collection basis and shall remit the amount to you on receipt of proceeds". Admittedly, the discrepancies remained till July, 12, 1978 as the description of goods in the railway receipts still remained "Sizola Brand Pure Mustard Oil 'Unrefined '" till the plaintiffs made a request to the Central Railway for the deletion of the word 'unrefined'.

10. On July 12, 1978 the appellant addressed a letter to the Bank of Indian making a demand for the refund of amount of Rs. 36,52,960 paid under reserve in respect of the first lot of documents stating; "In this connection we wish to state that we are now advised by our Patna office that the bills are not acceptable to the Corporation due to discrepancies. We shall, therefore, thanks you if you kindly remit the amount with interest at 5 per cent from, the date of payment to you by us to the date of payment by you to us.' On the same day, the appellant addressed a letter to the plaintiffs in regard to the second lot of 27 documents that the documents were not acceptable due to discrepancies and, therefore, no payment could be made against them under the letter of credit. On the next day, i. e. July 13, 1978 the plaintiffs addressed a letter to the appellant in respect of the first lot of 20 documents 'negotiated and paid by you under reserve', stating that the word 'unrefined' in the railway receipt should not have been treated as a discrepancy, for warding copies of telegrams sent by the Central Railway to the various destinations deleting the 27 documents of the Second lot, 'negotiate the documents and pay for the same forthwith'. On the same day, the plaintiffs also addressed a letter to Bihar Corporation stating that the word ' unrefined ' has no relation to the quality but was inserted for the purpose of paying a lower freight, and further that the railway authorities had agreed to amend the railway receipts by deleting the word 'unrefined'.

11. On July 13, 1978 the plaintiffs addressed the following letter to their bankers, the Bank of India :

July 13, 1978.Bank of India,Foreign Exchange Dept.,Mahatma Gandhi Road,Bombay 400 023. Attn : Mr. SirurDear Sirs, 19 documents for Rs. 1,92,648 each drawn under L/C No. 1/78 dated June 13, 1978 of United Commercial Bank Patna Office##

We are enclosing 19 documents as referred to above and request you to forward the same to the United Commercial Bank, Nariman Point, Bombay for negotiations of payment.

We request you to collect these funds forthwith and credit out Cash-Credit Account No. I with you.

We have complied with all the terms and conditions of the Letter of Credit and feel that United Commercial Bank would make the payment to you without reserve. You may accept the payment under reserve if insisted upon by them.

Sd/- Assistant Financial Controller##

The Bank of India accordingly wrote a letter to the appellant stating "we would accept payment under reserve". On July 14, 1978 the appellant addressed a latter to the Bank of India returning the

27 documents relating to the second lot signifying their inability to negotiate the documents due to discrepancies in the description of goods in the railway receipts, stating that mere deletion of the word 'unrefined' could not make the railway receipts clean, and furthermore, because some of the railway receipts were 'stale'. It also intimated the plaintiffs by their letter of even date that they could not lift the 'reserve' without obtaining prior permission of their constituents, i. e. the Bihar Corporation.

12. The plaintiffs, being apprehensive that their bankers, the Bank of India, would be bound to refund Rs. 36,52,960 lacs pursuant to the notice of demand served by the appellant inasmuch as the payment was made under reserve, kept a plaint ready on July 17, 1978 for grant of a perpetual injunction against the appellant, and on the same day addressed a letter to the appellant asking for payment of Rs. 49,31.496 against the second lot of documents, enclosing a letter of guarantee or indemnity executed by their bankers, which reads :

Dated July 17, 1978 United Commercial Bank, Nariman Point, Bombay 400 021.
Attn. Mr. P. K. Sharma Dear Sirs, Letter of credit No. 1/78 of your Patna Office dated
June 13, 1978 - Two sets, each containing 19 and 8 negotiable documents##

We are in receipt of your letters bearing No. Fex /Exp/78 dated July 12, 1978 and July 14, 1978 on the above subject.

We refer to our submission of 19 documents through our bankers, Bank of India and 8 documents submitted directly by us to you for negotiation and payment. We learnt from you that you have returned the set of 19 documents to Bank of India pointing out certain discrepancies in the documents to them. The set of 8 documents has been returned to us by you stating certain discrepancies under cover of your letter Fex/Exp/GSR/78 dated July 12, 1978.

One of the discrepancies pointed out by you in both the sets of documents (19 and 8) is regarding the appearance of the word 'unrefined' in the railway receipts, as the same word does not appear in the letter of credit along with the words 'Sizola Brand Pure Mustard Oil'. Out of abundant precaution, we then obtained and gave you copies of telegrams issued by the Central Railway to the Station Masters of the Various destination by stations, to which the goods were booked, to the effect that the word 'unrefined' is superfluous and, therefore, deleted. You have taken the stand that by this action of the Central Railway also the documents still does not continue to be in accordance with the letter of credit.

Out of abundant precaution, we are now submitting herewith the railway receipts returned by you wherein the word 'unrefined' has been physically deleted by the railway authorities.

We are also enclosing a letter of undertaking which is letter of undertaking issued by our bankers, the Bank of India, in your name indemnifying you against demurrage, wharfage and such other charges which you may have to pay at various destinations, where the goods have been consigned. This action of ours is without prejudice to any of our rights and contentions.

We now request you to pay for these documents forthwith.

Sd./- Director.##

13. The Bank of India executed a letter of indemnity or guarantee to the effect :

Bank of India 70/80, M. G. Road, Bombay - 400 023. July 18, 1978 United
Commercial Bank, Mafatlal Centre, Nariman Point Branch, Bombay. Dear Sirs, ##

In consideration of your having negotiated Documentary Bills of Exchange drawn by Godrej Soaps Ltd., drawn on Bihar State Food & Civil Supplies Corporation dated (various dates) under the commercial letter of credit No. L/C 1/78 dated June 13, 1978 issued by United Commercial Bank, Frazer Road Branch for account of Bihar State Food & Civil Supplies Corporation, we hereby 'unconditionally of non-acceptance and/ or non-payment of this/these bill(S) of exchange by reason of the following discrepancies claims by you :

* *

We have made arrangement for due payment of this/these bill (s).

We further unconditionally agree that in the event of the bills being dishonored on due presentation on account of the above discrepancies claimed by you to reimburse and on demand the equivalent of the above mentioned bill(s) together with all other expenses, demurrage and all such other charges incurred by you in connection with dishonored (s).

Notwithstanding anything contained hereinbefore our liability under this bond is restricted to Rs. 86, 00,00 (rupees eighty-six lacs only) apart from charges enumerated above and it will remain in force till August, 17, 1978. Unless a claim under the guarantee is made against us in writing and received by us before that date all your rights under the said guarantee shall forfeited and we shall be relieved and discharged from all liability thereunder.

for BANK OF INDIA Sd./- P. Accountant Sd./- P. Manager##

It is significant to note that it was represented by the Bank of India acting on behalf of the plaintiffs, "we have made arrangements for the payment of these bills", meaning thereby that the Bihar Corporation had agreed to retire the bills of exchange.

14. On July 19, 1978 thy representative of the plaintiffs, Messrs., Godrej Soaps Ltd., met the representatives of the appellant, the United Commercial Bank at Bombay. It was pointed out to him that the first set of 20 documents had not been accepted by the Bihar Corporation due to discrepancies and that the appellant had, therefore, by their letter dated July 12, 1978 made demand for refund of Rs. 36,52,960. A regards the second lot of 27 documents towards which the balance amount of Rs. 49,31,496 was payable to the Bank of India, in terms of the letter of indemnity or guarantee executed by it, he was informed that the instructions were awaited from the head office and was asked to come in the evening on the same day. The plaintiffs on these day, i. e. on July 19, 1978, brought the suit in the original Side of the Bombay High Court along with an application for the grant of a temporary injunction to restrain the appellant from recalling the amount of Rs. 36,52,960 but the learned single Judge, Bharucha, J. declined to grant an ex parte ad interim injunction, while allowing liberty to the plaintiffs to take out notice of motion returnable on August 4, 1978 but it appears that no such notice was ever taken out.

15. When the appellant came to know of the suit, the plaintiffs' representative made an endorsement at the foot of the letter dated July 17, 1978 :

As per Mr. Sharma's talk with Mr. K. R. Gokulam we hereby undertake not proceed with this suit.

Sd./- R. V. Shekar July 19, 1978.##

On the faith of the undertaking the appellant made Payment of Rs. 49,31,496 to the Bank of India in terms of the letter of indemnity.

16. There is controversy between the parties as to what transpired before the payment of Rs. 49,31,496 and as to the meaning of the aforesaid endorsement. We refrain from making any observations as they would tend to prejudice the rights of the parties. But one thing is clear that R. V. Shekar, Assistant Financial Controller, Godrej Soaps was acting on behalf of the plaintiffs, and the word 'we' meant 'Messrs. Godrej Soaps Limited'. Further, that the payment was secured by making the endorsement.

17. The Bank of India addressed two letters dated July 20, 1978 to the plaintiffs, the their account had been credited with Rs. 34, 70,312 and Rs. 14,61,184, i. e., Rs. 49,31,496 representing the value of the second lot of 27 documents, ' under reserve.

18. From the narration of these facts, prima facie it appears that the payment of Rs. 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India, was a payment made 'under reserve' and that of Rs. 49,31,496 was also made 'under reserve' as well as against the letter of guarantee or indemnity executed by it.

19. On August 2, 1978 the appellant served a letter of demand on the Bank of India, for refund of Rs. 85,84,456 together with interest thereon at 15 per cent per annum from the date of payment by it to the date of refund, stating that the bills of exchange has not been retired by the Bihar Corporation, that is the buyers, due to discrepancies. The letter reads :

August 2, 1978 Fex/Exp/1110/78 Bank of India 70/80 M. G. Road, Bombay 400 023. Attn : Mr. Pudval, Manager (Advance) Dear Sirs, Re : Your Guarantee Re. C/7 C2/943 dated July 18, 1978 in out favour for Rs. 867,00,000 Document drawn by M/s. Godrej Soaps Ltd., under our Frazer Road, Patna Branch L/C 1/78 dated June 13, 1978 negotiated by us under reserve.##

Please refer to our letter No. 646/78 dated August 1, 1978.

In this connection we are now advised by our Patna Officer that the bills have not been accepted by the drawers., Bihar State Food & Civil Supplies Corporation Limited due to the discrepancies. Our Patna Office is, therefore, arranging to return the documents to us which we hereby undertake to forward to you when received.

In terms of your Guarantee No. 8/72/943 dated July 18, 1978 for Rs. 86,00,000 and in terms of or letters dated June 24, 1978, June 27, 1978 and June 28, 1978 and two letters of July 19, 1978, under favour of which we had made payment of the bills to you we, hereby call upon you to had made amount of bills viz. Rs. 85,84,456 (rupees eighty-five lacs eighty-four thousand four thousand four hundred and fifty-six) together with interest from the date of payment by us to you to the date of refund by you to us @ 15 per cent per annum

In the meantime, please note that the documents are held by us at your sole risk and responsibility. You may, if you so desire, protect the merchandise including keeping the insurances cover note valid.

* * * Please treat this as MOST URGENT. Sd./- Manager##

20. The 47 Notary's Protest Certificates show that when the bills of exchange were represented for payment to the Bihar Cooperation on August 2, 1978 the drawers dishonored the bills of exchange on August 3, 1978 for the reason that (1) the railway receipts accompanying the bills were stale (2) the goods had not been supplied as per the terms of agreement, and (3) the chemical analysis showed that the oil required refinement before being fit for human use.

21. The Bank of India accordingly addressed a letter to the plaintiffs on the next day i. e. August 4, 1978 giving intimation that the appellant by its letter dated August 2, 1978 had made a demand for refund of the amount of Rs. 85,84,456 paid under reserve and in terms of its letter of guarantee or indemnity, seeking their instruction in the matter. On August 6, 1978 which was a Sunday, the plaintiffs moved the learned single judge, at his residence, along with an affidavit of their Sales Manager stating that unless an injunction was granted the Bank of India, according to the banking practice, would make payment of Rs. 85,84,456 to the appellant, on the commencement of the banking hours on August 7, 1978. The learned single Judge granted an ex parte ad interim injunction restraining the appellant from recalling or receiving the amount due from the Bank of India.

22. On December 17, 1978, the learned single Judge appointed the court receiver to be the ad interim receiver with power to sell the goods in question either in one lot or separate lots, on as is where is basis, without any obligation or liability to purchasers thereof as to quality, quantity or edibility of the said goods. On March 27, 1979 for Rs. 18, 53,000 and the sale was confirmed by the High Court on April 4, 1979.

23. The learned single Judge by his order dated August 24, 1979 made the temporary injunction absolute till the disposal of the suit on the view that the appellant was not entitled under the terms of the letter of credit, to unilaterally impose the condition of payment under reserve or refuse to pay against the documents tendered by the plaintiffs merely because of the alleged discrepancies, nor was it open to it to reject the documents as stale, for in his view, there were indeed no stale documents. Upon these grounds, he held that the plaintiffs had a prima facie case. He, however, added a rider that (1) the Bank of India was left free to decide whether or not the conditions for payment under the letter of indemnity had been satisfied to as to justify the making of payment thereunder to the appellant, and (2) the appellant was not restrained from making a claim upon the Bank of India or from receiving from it the amount payable in terms of the letter of indemnity nor was the Bank of India restrained from making payment thereunder.

24. The appellant being aggrieved by the order of the single judge dated August 24, 1979 preferred an appeal but a Divisions Bench of the High Court summarily dismissed the appeal on October 17, 1979.

25. The result of all this had been that the plaintiffs have not only received Rs. 85, 84,456 towards the price of 1000 metric tonnes of 'Sizola Brand Pure Mustard Oil, ' but also have the mustard oil in question on payment of Rs. 18,53,000.

26. The repercussion arising from the learned single Judge's order dated August 24, 1979 are reflected in the correspondence that ensued between the parties. There is no need to refer to all the letters except a few. The plaintiffs by their solicitors letter dated August 29, 1979, drew the attention of the Bank of India to the learned single Judges order granting injunction and instructed it not to pay. It reads :

The said interim order makes it absolutely clear that our clients will in no way be liable and responsible to return the amounts received under reserve and therefore our clients are in no way liable to pay and sum to UCO Bank and therefore you are also not liable at present to pay any sum to UCO Bank under the said letter of indemnity. In the circumstances, it will not only be improper but illegal for you to make any payment to UCO Bank.

In the circumstances, we have been instructed by our clients to request you which were hereby do, not to make any payment to UCO Bank. In spite of what is stated herein, if any payment is made by you to UCO Bank, the same will not be binding on our clients and you will not be entitled to debit such amount to our clients current account with you and our clients will refuse to reimburse you any sum so wrongfully paid by you. Please note that if any payment is made by you, it will be entirely at your risk and peril.

The appellant by its letter dated August 31, 1979 addressed to the Bank of India made a demand for payment of Rs. 85,84,456 in terms of the letter of guarantee or indemnity. But this was of no avail since the Banks of India as instructed by the plaintiffs, sent a letter dated October 16, 1979 to the appellant, by which it referred to the order passed by the learned single Judge, and refused to make any payment stating :

In its order dated August 24, 1979 the court has stated that there is no provision regarding staleness of the railway receipts in the letter of credit and it is not open to Bihar Food Corporation to recalled the payments made on that ground. Further, it is stated in the said order that the protests made upon dishonour of the bills by these second defendants show that no discrepancy was made a ground of dishonour.

Having regard to the observations in the order of the court, it cannot be said that the bills were dishonoured on the presentation on account of the discrepancies. Further, the bills do not appear to have been duly presented.

We understand that you have not appealed against this order. In the view of the aforesaid observations in the said order dated August 24, 1979 the terms of the indemnity can to be said to have been complied with so as to enable us to make payment to you.

The Bank of India went no to say that in the circumstance set out above, it had been advised that it was not proper for it to make any payment under the letter of guarantee to the appellant unless it was established in proper the letter of guarantee to the appellant unless it was established in proper proceeding that the terms of the mandate had been complied with so as to entitle it to receive payment and to enable the Bank of India to make payment to it. This was contrary to its earlier stand taken in the affidavit filed in June, 1979, in opposition to the notice of motion, by which it denied that 'it was trying to wriggle out of its obligations' under the letter of guarantee or indemnity and by which it said that it 'submits to the order of the court.

27. The main point in controversy is : Whether the court should in a transaction between a banker and a banker grant in 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 document of guarantee indemnity at the instance of the beneficiary? Another question also arises as to whether the court should not in a matter like this, depart from its normal practice, and refuse to interfere with an interlocutory order under Article 136

of the Constitution.

28. The nature of the contractual obligations flowing from a bankers letter of irrevocable credit and more particularly the rights of the seller as the accredited party or beneficiary of the credit, against the issuing and drawee bank was dealt with by this Court in *Tarapore & Co. Madras v. Tractors Export, Moscow*. It was held that the opening of a confirmed letter of credit constitutes bargain between the banker and the seller of the goods which imposes on the bankers an absolute obligation to pay. It was, however, pointed out relying on a passage in *CHALMERS' BILLS OF EXCHANGE* that it can hardly be overemphasised that the baker is not bound or entitled to honour the bills of exchange drawn by the seller unless they, and such accompanying documents as may be required thereunder, are in exact compliance with the terms of the credit. Such documents must be scrutinised with meticulous care. If the seller has complied with the terms of the letter of credit, however, there is an absolute obligation upon the banker to pay irrespective of any disputes there may be between the buyer and the seller as to whether the goods are up to contract or not. The court relied upon the two decisions in *Hamzeh Malas & Sons v. British Imes Industries Ltd.* and *Urguhart Lindsay & Co. Ltd. v. Eastern Bank Ltd.* and observed at page 930 of the Report (SCC p. 241), that the refusal of the bank to honour the bills of exchange drawn by the seller on presentation of the proper documents constituted a repudiation of the contract a whole, and the sellers were entitled to damages arising from such a breach.

29. In *Stein v. Hambro's Bank of Northern Commerce* a contract from the sale of hides by a English seller to a buyer from Venice, to be shipped from India, was financed by an irrevocable letter of credit. The buyer, contending that a condition had not been met, instructed the bank to cancel the credit and to refuse acceptance, which was accordingly done. In an action by the seller against the issuing bank it was held that there had been a breach of the letter of credit contract and that the seller could recover the amount of the bill of exchange for which acceptance was refused. The case was concerned chiefly with the question of the measure of damages. The right of the seller to maintain the action, if the conditions had been met seems to have been assumed without discussion. The theory underlying this result it that the issuing bank is not concern with the sales contract at all. Rowlatt, J. said :

The obligation of the bank is absolute, and is meant to be absolute, that when the documents are presented they have to accept the bill. This is the commercial meaning of it.

The fulfilment of the terms of the sales contract is a matter for the seller and the buyer alone.

30. In *Urguhart, Lindsay & Co. v. Eastern Bank Ltd.* Rowlatt, J. held that the position of the banker under an irrevocable credit is in law the same as that of a person who has contracted to buy a shipping document representing the goods shipped, or to be shipped, under the contract between the beneficiary and the person at whose instance the credit has been issued. The credit in this case was opened in pursuance of a contract between *Urguhart, Lindsay & Co.* and *Benjamin Jute Mills*, by which the former were to manufacture certain machinery and deliver it f. o. b. Glasgow, for shipment to Calcutta. Two installments of the machinery were manufactured and shipped and duly paid for by the Bank. A third installment was also manufactured and shipped, but the bank in this case refused to take up the shipping documents and honour the draft on the ground that items for extra cost of labour were included in the invoice price of the goods and that the bank had been instructed by *Benjamin Jute Mills* or refuse payment in those circumstances. Rowlatt, J. held that in such a case, the banker must accept and pay for the documents irrespective of any defence which

there may be to a claim under the contract of sale and that such defence is solely a matter to be fought out between the buyer and the seller.

31. In Gutteridge & Megrah's LAW OF BANKERS COMMERCIAL CREDITS, Sixth Edn., P. 21, the nature of the obligation created by bankers commercial credit is succinctly stated. A seller of goods relying on such an instrument believes that he has the direct obligation of the issuing bank running in his favour, enforceable by him against that bank that it will pay his drafts if drawn in compliance with the terms of the letter of credit. Banks are not concerned with the sales contract or the goods, if it were otherwise credit business would be impossible.

32. Banker's commercial credits are almost without exception every where made subject to the code entitled the 'Uniform Customs and Practices for Documentary Credits by which the General Provisions and Definitions and the Articles following are to "apply to all documentary credit and binding upon all parties thereto unless expressly agreed". A banker issuing or confirming an irrevocable credit usually undertakes to honour drafts negotiating intermediate banker and the credit is thus in the hands of the beneficiary binding against the banker. The credit contract is independent of the sales contract on which it is based, unless the sales contract is in some measure incorporated. Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the terms of the paying or negotiating bank, the beneficiary cannot claim against the paying bank and it is the paying Banks duty to refuse payment.

33. General Provision (c) of the Uniform Customs states that :

(c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts, and Article 8 emphasises this in providing that :

(a) In documentary credit operations all parties concerned deal in documents and not in goods.

34. The authorities are uniform to the effect that a letter of credit constitutes the sole contract with the banker, and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods, for the purchase price of which the letter of credit was issued. There is also no lack of judicial authority which lay down the necessity of strict compliance both by the seller with the letter of credit and by the banker with his customers instructions. In *English, Scottish and Australian Bank Ltd. v. Bank of South Africa*, Bailhache, J. said :

It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.

35. As Lord Sumner said in *Equitable Trust Co. of New York v. Sawason partners Ltd.*, approving the dictum of Bailhache, J. :

It is both common ground and common sense that in such transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room

for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines.

36. In *Rayner v. Habross Bank Ltd.* the credit called for documents covering a shipment of 'Coromandel ground-nuts'; the invoice tendered was for Coromandel ground nuts, but the bill of lading evidenced a shipment of machine shelled ground nut kernels country of origin : British India, and Hambros Bank refused to pay on the ground that the letter of credit called for an invoice and bill of lading both covering a shipment of 'Coromandel ground nuts whereas the bill of lading did not describe the goods in those terms, their attitude being upheld by the court of Appeal.

37. *Mackinnon, L. J.* after quoting *Bailhache, J.*, in *English, Scottish and Australia Bank Ltd. v. Bank of Sought Africa and Lord Sumner in Equitable Trust Co. of New York v. Dawson Partners Ltd.* laying down that a person who ships in reliance on a letter of credit must do so in exact compliance which it terms observed :

The defendant bank were told by their Danish principals to issue a letter of credit under which they were to accept documents - an invoice and bills of lading covering "Coromandel ground nuts in bags". They were offered bills of lading covering "machine shelled ground nut kernels". The Country of origin was stated to be British India. The words in that bill of lading clearly were not the same as those required by the letter of credit. The whole case of the plaintiffs is in the words of Lord Sumner. That "they are almost the same, or they will do just as well". The bank, if they had accepted that proposition, would have done so at their own risk. In think on pure principle that the bank were entitled to refuse to accept this sight draft on the ground that the documents tendered, the bill of lading in particular, did not comply precisely with the terms of the letter of credit which they had issued.

The learned Judge dealing with that part of judgment of *Atkinson, J.*, in which he said that "a sale of Coromandel ground nuts in universally understood to be a sale of machine shelled kernels", said :

When *Atkinson, J.*, says that it is "universally understood" he means that these gentlemen from Mincing Lane have told him : "We dealers in Mincing Lane all understand these things. We understand the "Coromandel ground nuts are machine shelled kernels, and we understand when we see "C. R. S. ", that the means 'Coromandels'. I think that is a perfectly impossible suggestion.... It is quite impossible to suggest that a banker in to be affected with knowledge of the customs and customary terms of every one of the thousand of trades for whose dealings he may issue letters of credit.

38. In *Bank Melli Iran v. Barclays Bank* the documents evidencing a shipment of '100 new, good, Chevrolet trucks' were held not to be a good tender under a credit calling for new trusts. *Mc Nair, J.* held that all the documents tendered and accepted by the defendants were defecting and consequently the defendants were not entitled to debit the plaintiff with the amount paid against these documents although the defendants succeeded on the ground that the plaintiffs had by their conduct ratified the defendants action in accepting the documents. The dicta in American cases are to the same effect. In *Lamborn v. Lake Shore Banking Co.* *Smith, J.* said :

A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under which the credit is to become a available and if he does

not ad the bank refuses to honour his draft, he has no cause of action against the bank.

Again, Hiscock, C. J. in *Laudisi v. American Exchange National Bank* said :

The bank has the power and is subject to the limitations which are given and imposed by (the Customers) authority. If it keeps within the power conferred it is protected in the payment of the draft. If it transgresses those limitations, it pays at its peril.

39. The relevant authorities uniformly lay down in dealing with commercial letters of credit that the documents tendered by the seller must complying the terms of the letter of credit, and that the banker owes a duty to the buyer to ensure that the buyers instructions relating to the documents against the which the letter of credit is to be honoured are complied with. The rights of a banker are described in HALSBURY'S LAWS OF ENGLAND, 4th Edn., Vol. 3 para 141 at page 106 :

Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the paying or negotiating banker the beneficiary cannot claim against the paying banker and it is the paying bankers duty to refuse payment. The documents must be those called for, and not documents which are almost the same or which will do just as well. The bankers is not called upon the to know or interpret trade customs and terms. It has been held that where a mandate is ambiguous and a paying banker acts in a reasonable way in pursuance of it, he may be protected. But this general rule cannot be stretched so far as to protect a banker who pays against documents describing goods in terms which are similar to but not exactly the same, as those stipulated in the credit.

The description of the goods in the relative bill of 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 tract the same. It is the description of the goods that is all important. The reason for this requirement is stated in Davis LAW RELATING TO COMMERCIAL LETTERS OF CREDIT, 2nd Edn. p. 76 :

It is not only the buyer who faces the risk of dishonesty or sharp practice on the part of the seller. For, in many instance, the banker looks to the goods for reimbursement of the whole or part of the amount he pays under the letter of credit. It is equally to his interests to ensure that such documents are called for by the letter of credit as will result in goods of the contract description being ultimately delivered. The buyer is not compelled to enter into the sales contract nor is the banker compelled to issue the letter of credit., If either of these contact is entered in to then it is for the buyer and the banker respectively to safeguard themselves by the terms of the contract. Otherwise they must be prepared to bear any ensuing loss.

But the liability thus imposed on the issuing banker carries with it corresponding right that the seller shall, on his part, comply with the terms of the letter of credit and the sellers obligations have been construed as strictly as those of the banker.

We have already referred to the statement of law in HALSBURY'S LAWS OF ENGLAND which found a place in PAGET'S' LAW OF BANKING, 8th Edn. at page 648, and we may at the risk of repetition reproduce the same, to the effect :

Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the intermediary or issuing banker, the beneficiary cannot claim against him; and it is the bankers duty to refuse payment. The documents must be those called for and not documents which are almost the same or which seem to do just as well.

40. In the light of these principles the rule is well established that 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.

41. It is somewhat unfortunate that the High Court should have granted a temporary injunction, as it has done in this case to restrain the appellant from making a recall of the amount of Rs. 85,84456 from the Bank of India in terms of the letter of guarantee or indemnity executed by it. The courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of a letter of credit or a bank guarantee between one bank and another. If such temporary injunctions were to be granted in a transaction between a banker and a banker, restraining a bank from recalling the amount due when payment is made under reserve to another bank or in terms of the letter of guarantee or credit executed by it, the whole banking system in the country would fail.

42. In view of the bankers obligation under an irrevocable letter of credit to pay, his buyer customer cannot instruct him not to pay. In *Hamzeh Malas v. British Imex Industries Ltd.* the plaintiffs the buyers applied for an injunction restraining the sellers the defendants from drawing under the credit established by the buyers bankers. This was refused, Jenkins L. J., stating at page 129, that :

... the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the good 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. The same considerations apply to bank guarantee.

43. A letter of credit sometimes resembles and is analogous to a contract of guarantee. In *Elian v. Matsas* Lord Denning, M. R., while refusing to grant in 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. Thus they refused in *Malas v. British Imex Industries Ltd.* But that is not an absolute rule. Circumstances may arise such as a warrant interference by injunction.

A bank which gives of performance guarantee must honour that guarantee according to its terms. In *R. D. Harbottle (Mercantile) Ltd. v. National Westminster Bank Ltd.*, Kerr, J. considered the position in principle. We would like to adopt a passage from his judgment at page 761 :

It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life blood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain, except possible

in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contract by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims; these are risks which the merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. The machinery and commitment of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged.

The observations of Kerr, J. have been cited with approval by Lord Denning M. R. in *Edward Owen Engineering Ltd. v. Barclays Bank International Ltd.*

44. The appellant was under a duty to its constituent, the Bihar Corporation to scrutinize the documents and could not be compelled to make payment particularly when the description in the documents did not tally with that in the letter of credit. It was fully entitled to exercise its judgment for its own protection. When the appellant against the first lot of 20 documents refused to make payment except under reserve and against the second lot of 27 documents even under reserve the remedy of the plaintiffs was to approach the openers i. e., the Bihar Corporation to instruct the appellant to effect a change in the description of the goods from 'Sizola Brand pure Mustard Oil' to "Sizola Brand Pure Mustard Oil 'unrefined'" in the letter of credit. Instead of adopting that course, the irregularity in the description in the documents tendered for payment was sought to be got over by the plaintiffs by instructing their bankers, the Bank of India, to execute a letter of guarantee or indemnity. When the bills of exchange tendered to the Bihar Corporation were dishonored when presented on August 3, 1978, the legal consequences must follow as between the appellant and the Bank of India. There was the inevitable chain of events which could not be prevented by the grant of an injunction.

45. The appellant presumably knew little or nothing about mustard oil. Bankers are not dealers in mustard oil in such a case as this, but dealers in documents only. The appellant as the issuing bank was presented with documents and asked to pay a very large sum of money in exchange for them. Its duty was to go out and determine by physical examination of the consignments or employment of experts, whether the goods actually conformed to the contract between the buyer and the seller, nor even determine either from its own or expert advice whether the documents called for the goods which the buyer would be bound to accept. The banker knows only the letter of credit which is the only authority to act, and the documents which are presented under it. If these documents conform to the letter of credit he is bound to pay. If not, he is equally not bound to pay. The letter of credit called for 'Sizola Brand Pure Mustard Oil 'Unrefined'" and it was not within the province of the appellant to say that the latter description meant identically the same as the former.

46. In the action against a purchaser for reimbursement, it is only necessary to prove that the goods tendered were the goods purchased, no matter how described, i. e. the purchaser was offered that which he had contracted for, while in such a case as this, in an action by the beneficiary against the issuing bank, it makes no difference whether the goods tendered were in fact identical to the goods purchased the only question being : Did the documents conform to the letter of credit?

47. It is clear from the letters addressed by the appellant to the Bank of India on June 23, 27 and 28, 1978 that the payment of Rs. 36,52,960 by three cheques for Rs. 7,29,872, Rs. 12,78,536 and Rs. 16,43,833 were payments made under reserve. Admittedly when these amounts were paid by the appellant to the Bank of India, the railway receipts were clean because they contained the

description "Sizola Brand Pure Mustard Oil 'Unrefined'". The appellant had taken the precaution of saying "Please note that the payment is made to you under reserve owing to the following discrepancies". There was a footnote added : "please note that this payment is made to you subject to repayment on demand of the bill amount, without loss of exchange to ourselves plus interest and other charges incurred by us, and/or by our principals, if the documents are to acceptable to the openers or buyer in view of the discrepancies whatsoever". It was also added : "Please also note that this reserve will remain in force until released by us in writing". Acceptance of these amounts by the Bank of India on Behalf of the plaintiffs was upon these terms. The Bank of India and the plaintiffs were thus fully aware that the appellant was to prepared to pay except under reserve.' The plaintiffs in their letters addressed to the appellant dated June 22 and 23, 1978 had added in ink the postscript : "In case of discrepancies, pay to our bankers Bank of India". These letters were in respect of 11 out of 20 documents; it is not suggested that others stand on different footing. The letter conveyed a request to "negotiate the sight of drafts for payment". Thus, the payment of Rs. 36,52,960 against the first lot of 20 documents was under reserve and was also covered by the letter of guarantee or indemnity.

48. As regards the second lot of 27 documents, the payment of Rs. 49,31,496, the appellant was not prepared to pay even under reserve because the Bihar Cooperation had refused to accept the consignments on the ground not only of discrepancies but also because the mustard oil was not fit for human consumption. There was no question of the appellant paying this large sum of money except against the letter of guarantee or indemnity executed by the Bank of India. It was represented by the Bank of India that it had made arrangements for due payment of the bills of the exchange. When the bills of exchange were dishonoured on being presented on August 3, 1978 the amount of Rs. 49,31,49 became immediately repayable on demand.

49. There still remains the question whether the court should interfere with an order of this nature. The courts powers under Article 136 of the Constitution are untrammled, but they are subject to self-ordained restrictions. The court does not, as a matter of rule, interfere with interlocutory orders, save under very exceptional circumstances.

50. The grant of a temporary injunction by the High court under Order 39, Rules 1, and 2, CPC appears to be wholly unwarranted. For reasons already stated, the appellant was well within its rights making a recall of the amount of Rs. 85,84,456 paid under reserve and/or in terms of the letter of guarantee or indemnity. We fail to appreciate any justification for grant of a temporary injunction to the plaintiffs the effect of which virtually is to restrain a transaction between a banker and a banker. The courts view with disfavour the grant of such temporary injunction.

51. In the instant case, the High Court has assumed that the plaintiffs had a prima facie case. It has not touched upon the question where the balance of convenience lay, nor has it dealt with the question whether or not the plaintiffs would be put to irreparable loss if there was no injunction granted. In dealing with the prima facie case, the High Court assumes that the appellant was in breach. There is no basis for this assumption at all, the High Court in this case has prejudged the whole issue by holding that the appellant could not unilaterally impose the condition of payment under reserve nor was it justified in holding that the documents were clean. The question whether the appellant was in breach is an issue to be tried in the suit. The question whether the documents were clean or unclean is a vexed question on which no opinion could be expressed at this stage. It is also premature at this stage to assume that there was no due presentation of the bills of exchange and their refusal.

52. No injunction could be granted under Order 39, Rules 1 and 2 of the Code unless the plaintiffs established that they had a prima facie case, meaning thereby that there was a bona fide contention between the parties or a serious question to be tried. The question that must necessarily arise is whether in the facts and circumstances of the case, there is a prima facie case and if so as between whom? In view of the legal principles applicable it is difficult for to say on the material on record that the plaintiffs have a prima facie case. It cannot be disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

53. Even if there was serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt that there is no reason to prevent the appellant from recalling the amount of Rs. 85,84,456. The fact remains that the payment of Rs. 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reserve while that of Rs. 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment under reserve is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless a interim injunction was granted.

54. It was, however, tried to be impressed upon us that the balance of convenience laying granting the injunction since the appellant would not be put to any loss because it had furnished the letter of guarantee against 100 per cent margin, i. e. on deposit being made by the Bihar Corporation of Rs. 85,84,456 for meeting the payment to be made under the credit. It was also said that the effect of recalling of Rs. 85,84,456 from the Bank of India will result in the plaintiffs facing a serious credit freeze, as the Bank of India will, on its turn, recall the amount from the plaintiffs. We are afraid, these considerations cannot prevail. For all these reasons, we are constrained to hold that here was no justification for the High Court to grant a temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908.

55. In the result, the appeal succeeds and is allowed with costs. The order passed by the High court dated August 24, 1979 granting a temporary injunction restraining the appellant, the United Commercial Bank, from recalling Rr. 85,84,456 from respondent 1, the Bank of India is set aside, and the application filed by the plaintiffs Messrs. Godrej Soaps Ltd. for the grant of a temporary injunction under Order 39, Rules 1 and 2 of the Code of Civil Procedure, 1908 is rejected with a direction that High Court shall try to dispose of the suit as expeditiously as possible, and in any event, within six months from today. The costs of the appellant shall be borne by respondents 1 and 2 equally.

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