
(2002) 10 CAL CK 0031

In the Calcutta High Court

Case No : G.A. No. 10 of 2002 and C.S. No. 254 of 2001

Amarnath Sanganaria

APPELLANT

Vs

Sonali Bank and Others

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 37 Rule 5
Contract Act, 1872 — Section 226

Citation : AIR 2003 Cal 255

Hon'ble Judges : Kalyan Jyoti Sengupta, J

Bench : Single Bench

Judgement

1. This application for summary judgment against the defendant No. 1 for US \$ 4, 14, 228 equivalent to sum of Rs. 1,98,74,759/- in connection with the money suit in which the plaintiff has claimed following amongst other reliefs :

(a) A decree for US \$ 7,97,018 equivalent to Rs. 3,71,41,038 as pleaded in paragraph 35 of the plaint.

(b) Decree for US \$ 7,97,018 equivalent to Rs. 3,71,41,038 against the defendants Nos. 1 and 2 and/or equivalent amount in Indian Rupees as on the date of decree to be passed herein.

(c) Alternatively decree against such defendant or defendants, who may be found liable to the plaintiff for such sum or sums as this Hon'ble Court may determine.

(d) Interim interest and interest on judgment at the rate of 20 per cent per annum,

2. The case made out in the plaint are briefly stated hereunder :

3. Pursuant to tripartite agreement the plaintiff duly sold and/or exported three lots of consignments of capital machinery spares for textile mill manufactured in India to the defendant No. 2 in accordance with its specific designs and

specification. In consideration thereof, the defendant No. 1 through its local Dhaka Branch opened irrevocable Letter of Credit for due payment of the price thereof to the plaintiff. The said irrevocable Letter of Credit is freely negotiable. Therefore, under the provision of Uniform Customs and Practice for Documentary Credits (hereinafter referred to as UCPDC) the defendant No. 3 has been nominated and/or is deemed to have been nominated as a negotiating bank. The payment by negotiation against irrevocable Letter of Credit was duly made in respect of the two previous consignments. However, these payments were delayed, therefore, the plaintiff has suffered loss or damages because of charging and realization of interest for late payment, on negotiation by the defendant No. 3 and also other damages. The major claim, in the suit and only claim in the summary proceeding relate to the price of the third consignment.

4. As far as the claims with regard to the previous two consignments are concerned the same have not been made subject matter of the summary proceedings.

5. In this case the claim of the plaintiff is sought to be recovered because of refusal to make payment despite negotiation of bills in gross breach of the terms of the Letter of Credit (hereinafter referred to as Credit). The Credit was issued sometimes in the month of March 1998 and the validity thereof expired on 7th June, 1998. However, it was extended by a communication dated 16th August, 1998 till 15th of November, 1998 and for shipment till 31st October, 1998. There is no dispute as regard the aforesaid fact.

6. It is the case of the plaintiff/petitioner that the goods were despatched by road transport and truck receipt thereof was obtained on 30th October, 1998 and the documents were presented before the defendant No. 3 for negotiation. According to the plaintiff this was done within the valid period as stipulated in the Credit, which provides amongst others that document could be presented in any bank in India for negotiation. The defendant No. 3 unconditionally accepted this, thus it became the agent of the opening bank namely defendant No. 1. On 17th November, 1998 the documents were forwarded to the defendant No. 1, thus, according to the plaintiff, the negotiation was completed scrupulously observing the terms of the Credit. However, on 23rd November, 1998 the defendant No. 1 through its Sonali Bank Local Office Dhaka intimated of its rejection by telex message stating that the validity of LC had expired and documents were negotiated thereafter, however, without returning the documents. After eight months from the date of despatch of the documents by defendant No. 3 to defendant No. 1, the documents were returned to the defendant No. 2 by the defendant No. 3, which is in gross breach of Article 14(d)(ii) of the U.C.P.D.C.

7. Mr. Kapur, Senior Advocate submits that the reasons for rejection of the bills by the defendant No. 1 is absolutely illegal and in gross breach of the terms of the Credit as well as the provision of U.C.P.D.C. It is wrongly contended that the negotiation was done beyond the stipulated period or title of the Credit expired. He submits that the instant Credit is freely negotiable by any Bank in India,

which necessarily follows that negotiation of the documents could be made in India and under no circumstances negotiation in Bangladesh would or could arise. His further contention is that in a freely negotiable credit and bank can be nominated in terms of Article 10(b)(i) of the U.C.P.D.C. In terms thereof the plaintiff being the beneficiary presented documents together with the Credit before the Bank of India, who acting as an agent of defendant No. 1 accepted the same without any reservation. By letter dated 17th November 1998 the defendant No. 3 forwarded the said bulls to the Sonali Bank, namely defendant No. 1, claiming reimbursement and confirming the plaintiff having complied with the terms, of the Credit. Therefore, having received the documents in this case in course of negotiation, the defendant No. 3 came to be nominated agent of the issuing bank. In support of his contention he has relied on a decision of the Supreme Court reported in *Satnam Singh Vs. State of Rajasthan*, . He also relied on Section 26 of the Central Act 1862 contending that any act of the agent binds the principal. As such he urges the negotiation was not required to be done by the plaintiff with the defendant No. 1 Sonali Bank by presenting the documents. The presentation was done on 13th November 1998 and the last date thereof, admittedly was on 15th November 1998.

8. He contends further that allegation regarding discrepancies in the documents must be ignored for the same were sent by the defendant No. 3 to the defendant No. 1 on 17th March 1998 and held back by Sonali Bank till 28th July 1999 that is to say for more than eight months. Under Article 14(d)(ii) of the UCPDC it was mandatory obligation of the defendant No. 1 if it wanted to reject the documents, to State in the notice of rejection in clear terms whether it was holding the documents at the disposal or returning them to the presenter. This was not done in the notice dated 23rd November 1998 by the defendant No. 1 bank. In view of the provision of under Article 14(e) of UCPDC the defendant No. 1 is precluded from contending that the documents were not furnished in compliance of the terms of the Credit. In other words, defendant No. 1 is estopped from alleging that there was any discrepancy in the documents.

9. The plaintiff is entitled to recover the entire amount from the defendant No. 1 irrespective of the claim as against the defendant No. 2 who is the buyer of the aforesaid materials. His client's right to recover the aforesaid amounts from the defendant No. 1 arises from Article 9(a)(iv) of the UCPDC. He submits that the obligation of the issuing bank constitute an undertaking to pay once the documents are presented to the nominated bank and the terms arid conditions of the credit are complied with. His further contention is that it is a settled position of the law that Bank is obliged to pay the amount guaranteed by credit, such obligation is unconditional, absolute and irrevocable. In this connection he has relied on the following authorities :

(i) AIR 1998 Bombay 82

(ii) *United Commercial Bank Vs. Bank of India and Others*,

(iii) U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd.,

(iv) Satnam Singh Vs. State of Rajasthan,

10. According to Mr. Kapur there is no defence raised at all against the claim in this summary proceeding so the judgment and decree must follow.

11. The defendant Nos. 1 and 2 in order to establish their defence for trial of the suit have stated in the affidavit affirmed on their behalf that the suit is not maintainable as Sonali Bank local Office Dhaka is the issuing bank which has not been made party in the suit. Under Article 2 of the UCPDC each bank is to be treated as a separate and independent entity and the Calcutta Branch of Sonali Bank is maintaining an account as banker of Sonali Bank of Dhaka office. No writ of summons was served upon the Dhaka Branch. In this case there cannot be negotiation by the defendant No. 3 at all rather the plaintiff merely presented the documents before the defendant No. 3 and it is not stated whether the payments were made by the defendant No. 3 to the plaintiff to establish or constitute a case of negation. Under the provision of UCPDC in order to establish a claim under Credit there must be a case of valid negotiation. The validity of the Credit expired and the documents were negotiated beyond the stipulated period of 15 days from the date of truck receipt. Moreover, the documents are discrepant.

12. Thus the aforesaid facts are sought to be demonstrated before this Court to contend that there is sound defence and un-conditional leave should be granted.

13. Mr. Pratap Chatterjee Learned Senior counsel appearing for the defendant. Nos. 1 and 2 highlight the aforesaid fact con-tends in his legal submission that the suit is bad non-joinder of necessary party as the Sonali Bank Dhaka Office is not made a party defendant; so no decree or judgment can be passed as the suit is not maintainable. Besides, there are series of triable issues that is to say whether the presentation of the documents amounts to negotiation or not. According to him negotiation means giving of value of drafts and/or documents by the bank, authorized to negotiate. Mere examination of the documents without giving a value does not constitute negotiation. The plaintiff has not stated, whether it has received the value for the documents either from the defendant No. 3 or from anybody else, so there is no negotiation at all. Had it given the value of the documents, it would have become a nominated bank but it chose not to do so. He further contends that no document whatsoever relating to alleged negotiation or alleged presentation of bills has been annexed to the petition or produced before the Court. These are the facts that are to be proved and issues relating thereto are to be tried, so unconditional defence is to be allowed. .

14. His next contention is that whether last date of negotiation of 13th November 1998 or 14th November 1998 or the presentation was done after 19 days as claimed in the rejection letter dated November 23, 1998 of the Sonali Local Office Dhaka are questions of fact and to be decided at the trial. On any event, if

the contention of the plaintiff having presented documents, and received the value on negotiation (under Clause 10(b)(ii) of the UCPDC) is accepted then, and in that event, the defendant No. 3 became the holder in due course of it and the plaintiff cannot have any cause of action nor has its locus standi to file this suit. His further contention is that Sonali Bank Calcutta has not issued nor confirmed the Credit, as such it is not a confirming bank. The liability, if at all, is of Sonali Bank Local Office Dhaka. His next contention is that the question of estoppel in this case does not arise as when the documents were sought to be presented and negotiated at Dhaka the validity of the Credit had expired. In support of his contention he has, relied on an unreported decision of this court of a Learned single Judge dated 15th December 1999 (P. K. S. Limited v. South East, Bank Limited).

15. Having heard respective contentions of the learned counsels for the parties in this case the duty of the Court in a summary proceeding will be to see whether the defendant has been able to make out strong defence so that the leave can be granted without any condition being imposed or the strength of defence is such that may be allowed to be put on certain condition and further whether, the plaintiff is entitled to final judgment as no defence has been made out.

16. The fact stated in the affidavit-in-opposition and the contention of Mr. Chatterjee at the first blush suggest that the suit needs to be tried, allowing to defend unconditionally, but upon examining the same with a little degree of attention I feel defence is not so strong for which leave should be granted unconditionally. I now set out detailed reasons as to why the aforesaid conclusion of mine has been arrived at.

17. I find there is no dispute that the credit was issued by defendant No. 1 and the validity thereof was extended till 15th November 1998. There is no dispute either, rather, admittedly the Credit was freely negotiable with any Indian Bank. The implication under the law of freely negotiable credit is that any bank is a nominated bank in view of the provisions of Article 10 of UCPDC. It further provides that presentation of documents must be made to the issuing bank or the confirming bank if or any other nominated banks. Therefore, I reproduce Article 10 of the said UCPDC.

"Article 10

Types of Credit

a. All Credit must clearly indicate whether they are available by sight payment, by deferred payment, by acceptance or by negotiation.

b. (i) Unless the Credit stipulates that is available only with the issuing Bank, all Credits must nominate the bank (the "Nominated Bank") which is authorized to pay, to incur a deferred payment undertaking, to accept Draft(s) or to negotiate. In freely negotiable Credit, any bank is a Nominated Bank.

Presentation of documents must be made to the issuing Bank or the Confirming

Bank, if any, or any other Nominated Bank.

(ii) Negotiation means giving of value for Draft(s) and/or document(s) by the bank authorized to negotiate. Mere examination of the documents without giving of value does not constitute negotiation.

c. Unless the Nominated Bank is the Confirming Bank, nomination by the Issuing Bank does not constitute any undertaking by the Nominated Bank to pay, to incur a deferred payment undertaking, to accept Draft(s), or to negotiate. Except where expressly agreed to by the Nominated Bank and so communicated to the Beneficiary, the Nominated Bank's receipt or and/or examination and/or forwarding of the documents does not make that bank liable to pay, to incur a deferred payment undertaking to accept Draft(s), or to negotiate.

d. By nominating another bank, or by allowing for negotiation by an bank, or by authorizing or requesting another bank to add its confirmation, the Issuing Bank authorizes such bank to pay, accept Draft(s) or negotiate as the case may be, against documents which appear on their face to be in compliance with the terms and conditions of the Credit and undertakes to reimburse such bank in accordance with the provisions of these Articles."

18. In this case previously the defendant No. 3 the Bank of India has been chosen to be a nominated bank and it has been accepted by the defendant No. 2 as nominated Bank for negotiation in respect of the two lots of consignments. Indeed the defendant No. 1 has not raised any dispute to this position. In spite of all this Mr. Chatterjee tried to contend that the presentation of the documents before the defendant No. 3 is not the negotiation, and until and unless the documents are presented before the Dhaka Local Office of defendant No. 1, there cannot be any negotiation under the law. This was presented after expiry of the stipulated time and on 17th November 1998.

19. I am unable to accept contention of Mr. Chatterjee in this regard and Mr. Kapur is right in saying that the aforesaid Article 10 Clause (b) provides amongst other that the nominated bank is authorized to incur deferred payment undertaking to accept draft or to negotiate and because of this authorization the nominated bank becomes an agent of the issuing, bank (in this case defendant No. 1). I accept the argument of Mr. Kapur further that any act of the agent lawfully done on behalf of the principal, the principal is bound under the provisions of Section 226 of the Contract Act to reimburse the plaintiff.

20. I am not in agreement with the contention of Mr. Chatterjee that the defendant No. 3 has merely examined the documents and the plaintiff merely presented the documents to the defendant No. 3 and the same are not negotiation. Article 10 Clause (b) is very clear guidance in this) situation as the defendant No. 3 herein acted as an agent of the defendant No. 1 for negotiation and the documents were presented on 13 November 1998 within the valid period of the Credit that is to say by 15th November 1998. I find from the documents that on 17th November 1998 defendant No. 3 forwarded the bills and documents

to the defendant No. 1 and claimed for reimbursement thereof. Mr. Kapur is justified in saying once the agent has accepted all the documents as being perfect and in order, the defendant No. 1 being the principal in this case subsequently cannot take different stand from that of the agent. In this case that is what has happened. Mr. Chatterjee's contention is that the payment of the value of the bills to the plaintiff is a condition precedent for negotiation. In my view it is not always necessary as Clause (b) of Article 10 makes it clear if the nominated bank incurs deferred payment undertaking then it can be termed to be a negotiation. I find from the forwarding letter of the defendant No. 3 that it has claimed reimbursement for each payment. Therefore, it pre-supposes that payment must have been made. Mr. Chatterjee's argument is that the plaintiff has no cause of action as against the defendant No. 1 and it is the defendant No. 3 who can claim reimbursement. Apparently it seems to be a good piece of argument. But as I delve in the matter accurate position of law on the claim of the plaintiff emanates from the Letter of Credit and it is the defendant No. 1 who is to discharge undertaking to make payment in terms thereof. Once it is found that the bills were negotiated duly, such undertaking in terms of the credit has to be discharged by the issuing bank namely defendant No. 1 either through itself or through its agent. This is an international transaction as such the said letter of credit has been made a freely negotiable one and any bank all over the world is deemed to be a nominated bank, this nomination means acting for negotiation on behalf of the issuing bank and to discharge its obligation on its behalf by paying and the issuing Bank being principal is to reimburse if demanded.

21. The contention of the defendant No. 1 bank is that the documents are discrepant is in my view frivolous and not tenable. Firstly, because its agent has examined the documents were perfectly in order and it is not a case of fraud or collusion or connivance between the plaintiff and the defendant No. 3. When the nominated bank has accepted documents to be perfect and are in order the principal in this case cannot take a different stand as I have already observed, no case of fraud, collusion or connivance has been made out.

22. I find in order to prevent fraudulent claim being made for reimbursement by the nominated bank safe guard measure has been provided in Article 14 of the UCPDC. Therefore, I set out the said Article hereunder.

"Article 14.

Discrepant Documents and Notice

a. When the Issuing Bank authorizes another bank to pay, incur a deferred payment undertaking, accept Draft(s), or negotiate against documents which appear in their face to be in compliance with the terms and conditions of the Credit, the Issuing Bank and the Confirming Bank, if any are bound :

(i) to reimburse the Nominated Bank which has paid, incurred a deferred payment undertaking, accepted Draft(s) or negotiated.

(ii) to take up the documents;

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 to 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 judgment 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) If the issuing Bank and/or Confirming Bank, if any, or Nominated Bank acting on their behalf, decides to refuse the documents, it must give notice to that effect by telecommunication or, if that is not possible, by other expeditious means, without delay but not later than the close of the seventh banking day following the day of receipt of the documents. Such notice shall be given to the bank from which it received the documents, or to the beneficiary, if it received the documents directly from him.

(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, is returning them to the presenter.

(iii) The Issuing Bank and/or Confirming Bank, if any, shall then be entitled to claim from the remitting bank refund, with the interest of any reimbursement which has been made to that bank.

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 terms and conditions of the Credit.

f. If the remitting bank draws the attention of the Issuing Bank and/or Confirming Bank, if any, to any discrepancy(ies) in the document(s) or advises such banks that it has paid, incurred a deferred payment undertaking, "accepted Draft(s) or negotiated under reserve or against an indemnity in respect of such discrepancy(ies), the Issuing Bank and/or Confirming Bank, if any, shall not be thereby relieved from any of their obligations under any provision of this Article. Such reserve or indemnity concerns only the relations between the remitting bank and the party towards the reserve was made, or from whom, or on whose behalf, the indemnity was obtained."

23. To me the aforesaid Article has provided for checks and balance between fraudulent and collusive claim and reimbursement to the nominated bank, and wrongful and harassing refusal to make payment in case of genuine transaction.

Article 14 Clause (d) provides for notice to refuse to accept the documents within 7 days mentioning whether it is holding the documents at, the disposal or is returning them to the presenter. In this case I do not find from the notice that the documents themselves are discrepant it merely mention L.C. having expired and late negotiation, but it is not mentioned whether documents are being withheld at its disposal or returning them to the bank. Ultimately on 28th July 1999 the said documents were returned. In the event the issuing bank fails to act in accordance with the provision of Article 14 causing service of notice mentioning return or holding of the documents within time as above, then, the issuing bank shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit. I am of the view that it was not correct to contend that the documents were not negotiated within the time as mentioned in the Letter of Credit. I hold that the documents were negotiated within the time and in terms of the Letter of Credit.

24. As regard the pleas of non-joinder of necessary party is concerned I think that Article 2 of the UCPDC is not applicable for the purpose of transaction for payment in terms of the Letter of Credit. Sonali Bank is a body corporate and it may have branches all over the world. For service of writ summons or process of the Court one of its branches would be good enough to bring it as defendant. I find in this proceeding affidavit-in-opposition has been filed not only on behalf of the Calcutta branch but also on behalf of the Dhaka Local Office Branch. In view of the aforesaid position it is futile to contend that Sonali Bank Dhaka Office has not been made a party or no writ of summons has been served. When a principal office of a particular Bank has come forward to contest the suit or proceeding on behalf of both the parties the aforesaid contention is deemed to have been waived. It is true that I have decided that the negotiation was done within the valid period of the Credit, yet question remains whether the defendant No. 1 is liable to make payment or not. It is now settled position of the law the hanker is bound to honour the Letter of Credit and/or bank guarantee by making payments in terms thereof excepting in a case of fraud or collusion. Following are some of the decisions of the Supreme Court cited by Mr. Kapur in support of his contention. In case of United Commercial Bank Vs. Bank of India and Others, in its paragraph 31 it has been observed as follows :

"31. In Gutteridge & Megrah's Law of Bankers" Commercial Credits, Sixth Edn. P. 2; the nature of the obligation created by a banker's 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."

25. In the case of U.P. Cooperative Federation Ltd. Vs. Singh Consultants and Engineers (P) Ltd., Late Chief Justice Sabyaschi Mukherji (as His Lordship then

was) in paragraph 21 of his judgment has observed amongst others.

"21. In the instant case, the learned Judge has proceeded on the basis that this was not an injunction sought against the bank but this was the injunction sought against the appellant. But the net effect of the injunction is to restrain the bank from performing the bank guarantee. That cannot be done. One cannot do indirectly what one is not free to do directly. But a maltreated man in such circumstances is not remedy-less. The respondent was not to suffer any injustice which was irretrievable. The respondent can sue the appellant for damages. In this case, there cannot be any basis for apprehension that, irretrievable damages would be caused if any. I am of the opinion that this is not a case in which injunction should be granted. An irrevocable commitment either in the form of confirmed bank guarantee or irrevocable letter of credit cannot be interfered with except in case of fraud or in case of question of apprehension of irretrievable injustice has been made out. This is the well settled principle of the law in England. This is also a well settled principle of law in India as I shall presently notice from some of the decisions of the High Court and decisions of this Court."

26. In a decision of the Bombay High Court reported in *Virgo Steels Vs. Bank of Rajasthan Ltd. and others*, the Division, Bench of that Court has gone to the extent of saying in its paragraph 19 that, even if there is some allegation of fraud the liability of the bank qua plaintiff cannot be denied on the basis of the circular issued by the Reserve Bank of India (RBI) and naturally bank guarantee and/or letter of credit must be honoured by the bank concerned.

27. In this case plea was taken by the banker that the Letter of Credit was issued in collusion with the seller and/or some employees of the bank and such plea was not accepted by the Court and in the summary proceeding unconditional leave to defend was not granted. It was observed in that case further that if on such plea bills are not honoured it is obviously affecting the character of LCs and, as stated by RBI this plea also affects the credibility of the entire payment mechanism through banks and affect the image of the banks, in set of circumstances, in the present case, UCP is bound by its own formation that the documents were in order and the payment is to be made on the due date.

28. Again in a fairly recent decision of the Supreme Court reported in *Satnam Singh Vs. State of Rajasthan*, . in its paragraph 60 it has been observed as follows :

"60. The contract between the issuing banker and the paying or negotiating (intermediary) banker may partake of a dual nature. The relationship is mainly that of principal and agent mandatory. In order that he may claim reimbursement for any payment he makes under the credit or the indemnity of an agent, the intermediary banker must obey strictly, the instructions he receives, for any acting on them, he accepts them and thus enters into contractual relations with the issuing bank. The instructions may take the form of an authority either to pay against documents or drafts accompanied by

document, or to negotiate drafts drawn either on the issuing banker or on the buyer. The authority may be accompanied by instructions to the intermediary banker to confirm the credit, that is, to place himself in binding contractual relationship with the beneficiary. There is ordinarily no privity between the intermediary banker and the buyer. But the intermediary banker, though initially the agent of the issuing bank, may also act as principal in relation to him. (Pagets" Law of Banking. 9th Edn. 1982, pp. 543-44)."

29. In view of the aforesaid pronouncement of the Apex Court as well as the Bombay High Court I am of the view that the defendant No. 1 is obliged to make the payments, as it is found that the presentation of the documents and negotiation thereof have been done in terms of the Credit. Moreover, Article 9 of the UCPDC attaches expressed unequivocal liability of issuing bank. The aforesaid Article provides amongst others that an irrevocable credit constitute a definite undertaking of the issuing bank, provided that the stipulated documents are presented amongst others to the nominated bank and that the terms and conditions of the credit are complied with. In this case as I have observed that the defendant No. 3 has confirmed that all the terms and conditions of the Credit have been complied with at the time of negotiation. Following the decision of the Supreme Court as noted by the reported in Satnam Singh Vs. State of Rajasthan, the bills were negotiated by the defendant No. 3 duly and lawfully on behalf of the defendant No. 1.

30. The unreported decision cited fey Mr. Chatterjee is not applicable as in that case it was held factually that Letters of Credit was not the valid because presentation and negotiation were done beyond stipulated time.

31. Hence, I hold that the defence which is sought to be made out by the defendant No. 1 in this case is very weak and moonshine and such defence cannot be allowed to be put forward without any condition. Therefore, I grant leave to defend to the defendant No. 1 in this suit upon furnishing the security either in form of any bank guarantee to be given by any nationalized bank in India in favour of Registrar Original Side or in demand draft with the Registrar Original Side within a period of 8 weeks from date then the written statement shall be filed by the defendant No. 1 within a period of 4 weeks from the date. There will be cross order for discovery within 2 weeks thereafter. Inspection forthwith.

32. If the security is furnished in Bank guarantee then the same shall be renewed from time to time till the disposal of the suit. In the event security is furnished in demand draft then the same shall be encashed by the Registrar Original Side and be kept in a short term fixed deposit in State Bank of India Main Branch until further order of this Court.

33. In the event the aforesaid security is not furnished then there will be a final judgment in the amount of Indian currency equivalent to US \$ 4,19,225 on the date of default.

34. There will be Interim interest and interest on judgment in that case at the rate of 10 per cent per annum till the realization.

35. In view of the aforesaid Judgment and order no separate order is passed in another application being G.A. No. 2218 of 2000.