

(2015) 05 CAL CK 0027
In the Calcutta High Court
Case No : C.S. No. 254 of 2001

Amarnath Sanganaria

APPELLANT

Vs

Sonali Bank Ltd. and Others

RESPONDENT

Date of Decision : 15-05-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2015) 05 CAL CK 0027

Hon'ble Judges : Debangsu Basak, J

Bench : Single Bench

Advocate : S.K. Kapoor, Senior Advocate, D. Ghosh, R. Kapoor, P. Gorai, J. Pugalia and S. Bhakta, for the Appellant; S. Dutt, R. Ghosh, M.A. Jabbar and N. Khanjoy, Advocates for the Respondent

Judgement

Debangsu Basak, J.—The plaintiff seeks to recover damages from the defendants in this suit resulting out of execution of a contract for export. The plaintiff had entered into a tripartite contract for export of machineries to the second defendant with the first and the second defendants. The second defendant is a purchaser in Bangladesh. At the instance of the second defendant the first defendant had opened a Letter of Credit negotiable at any bank throughout India. The plaintiff claims to have negotiated the documents of title with regard to the machineries exported through the third defendant. The claim of the plaintiff is principally on four grounds. The plaintiff claims that the export order was to be executed by four consignments. In respect of the first and the second consignments, the plaintiff had negotiated the documents of title to the goods through the third defendant with whom it had enjoyed credit facilities. The first defendant had delayed making payment in terms of the Letter of Credit and therefore the plaintiff had to pay interest on such account of such delay to the third defendant. The plaintiff contends that the third consignment was negotiated within the validity period of the Letter of Credit. The first defendant had wrongfully refused to honour its obligations under the Letter of Credit in respect of the third consignment. The plaintiff therefore claims the value of the third

consignment from the defendants.

2. The plaintiff had sought damages on account of loss in respect of the fourth consignment in the plaint. During the hearing of the suit, the plaintiff has however given up such claim.

3. The first defendant has filed a written statement. It has denied the material allegations made in the plaint against it. The first defendant contends that, the documents with regard to the first two consignments were not in order. The discrepancies in the documents were noted. When the discrepancies were accepted by the second defendant, the first defendant had paid in terms of the Letter of Credit. Therefore, there was no delay in payment and hence the first defendant is not liable to pay any interest for the alleged delay.

4. So far as the third consignment is concerned, it is contended that the third consignment was not negotiated by the plaintiff with the third defendant in terms of the Uniform Customs and Practice 500. In any event, the documents relating the third consignment was submitted by the third defendant with the first defendant after expiry of the validity period and, therefore, the first defendant is not liable to pay for the third consignment. The first defendant also contends that, since the additional conditions in the Letter of Credit provides for payment of 10 per cent of the invoice value after erection and completion certificate and that such erection and completion certificate not happening, first defendant is not liable to pay such 10 per cent of the first, second and the third consignments.

5. Nine issues were settled for trial by the Order dated April 21, 2015. The seventh and the eighth issues settled by the Order dated April 21, 2015 are repetitions of each other. The plaintiff has however given up its claim under such issues. The surviving issues therefore are as follows:-

"1. Does the plaintiff have any cause of action against the defendants?

2. Is the plaintiff entitled to a decree of value of 10% of the billed amount in respect of 1st and 2nd consignment as stated in paragraphs 35(a) and 35(b) of the plaint?

3. Is the plaintiff entitled to a decree for interest of delayed payment for 1st and 2nd consignment as stated in paragraphs 14, 21, 33, 34, 35(c), 35(d) and 35(e) of the plaint?

4. Is the plaintiff entitled to a decree of 100% of bill amount in respect of 3rd consignment as stated in paragraphs 29 and 35(f) of the plaint?

5. Whether the documents were duly negotiated in respect of the 3rd consignment?

6. Whether the Letter of Credit was negotiated before its expiry on 15th November, 1998, in terms of UCP 500?

7. To what reliefs, if any, is the plaintiff entitled to?"

6. The plaintiff has examined himself as its witness. The first defendant has produced one of its employees as its witness. No other defendant has produced any witness at trial.

7. Mr. S.K. Kapoor, learned Senior Advocate Counsel for the plaintiff contends that, the plaintiff had entered into an agreement with the second defendant for supply of machineries and spare parts for textile mills to the second defendant. One Emon Trading International Limited had acted as an agent of the plaintiff in Bangladesh. The plaintiff, the first defendant and the second defendant had entered into a tripartite agreement dated March 5, 1998 being Exhibit "K" with regard to the export. The defendant No. 1 had issued a Letter of Credit for US \$ 6,83,000 being Exhibit "C" herein. In terms of such Letter of Credit the plaintiff had dispatched its first consignment to the second defendant. The plaintiff had negotiated the original documents required under the Letter of Credit with the third defendant as would appear from Exhibit "D". Mr. Kapoor refers to the relevant clauses of the Letter of Credit. The Letter of Credit is governed by Uniform Customs and Documentary for Credits (1993 Revision), International Chamber of Commerce Publication No. 500 commonly known as Uniform Customs and Practice 500 (UCP 500). The Letter of Credit is freely negotiable at any bank in India. Its expiry date is stated to be June 7, 1998 in India although the same had been subsequently extended.

8. Referring to the additional conditions of the Letter of Credit, it is submitted that 90 per cent payment of the contract value was agreed to be made on submission of shipping documents at site and the balance 10 per cent after completion of erection and commissioning of the plant and after 30 days from the date of successful trial run. Mr. Kapoor refers to Articles 4, 9, 10, 13, 14 and 19 of the UCP 500 and submits that, the plaintiff is entitled to payment under the Letter of Credit being Exhibit "C" as the plaintiff had acted in terms thereof and the first defendant had acted in breach thereto.

9. On the interpretation of the clauses of UCP 500 Mr. Kapoor relies upon 2010 Volume 2 Lloyd's Law Reports page 641 (Fortis Bank SA/NV and Anr. v. Indian Overseas Bank) and the Court of Appeal judgment therefrom being 2011 Volume 2 Lloyd's Law Reports page 641 (Fortis Bank Sa/NV and Anr. v. Indian Overseas Bank). He also refers to 2002 EWHC page 973 (Credit Industrial et Commercial v. China Merchants Bank).

10. With regard to the first consignment, Mr. Kapoor submits that, the so-called discrepant documents had been accepted and paid for. He refers to Exhibit "C" being the Letter of Credit and Exhibit "2" being a communication of the third defendant to the first defendant. By such communication dated May 29, 1998 the third defendant had forwarded SGS Bangladesh Certificate in connection with the consignment. Request for payment had been made. He also refers to Exhibit "4", Exhibit "5" being the Certificate of Inspection of SGS India Limited dated May 12, 1998 and Exhibit "6" being the Certificate dated May 28, 1998 issued by SGS Bangladesh Limited. He submits that, the ground for rejection on the

consignment stated by the first defendant was not correct.

11. Mr. Kapoor submits that, the validity of the Letter of Credit was extended with the date of shipment being October 31, 1998 and expiry date of the Letter of Credit being November 15, 1998.

12. Mr. Kapoor contends that, the second consignment was thereafter forwarded. The first defendant had delayed payment for the second consignment on the same ground of alleged discrepant documents. The alleged discrepancy is being the Certificate of SGS Bangladesh Limited. This being the same ground as that of the first consignment and such situation being explained and explanation accepted for the first consignment, the first defendant had acted in breach of UCP 500 and, therefore, is liable to pay interest for the period of default. He refers to Exhibit "13" being a telex dated October 18, 1998 issued by the first defendant to the third defendant.

13. With regard to the first two consignments Mr. Kapoor submits that, in terms of Article 19 of the UCP 500 the first defendant is liable to pay interest for the actual days of delay in payment. The number of days of delay appears from the record. With regard to the number of days of delay and the rate of interest Mr. Kapoor refers to Exhibits "18" and "19".

14. So far as the third consignment is concerned, Mr. Kapoor submits that, the documents relating thereto had been negotiated within the validity period of the Letter of Credit. The third defendant not having rejected the negotiation in terms of UCP 500 is liable to pay the plaintiff.

15. Mr. Suman Dutt, learned Counsel for the first defendant submits that, since the documents were discrepant with regard to the first and the second consignments and the importer being the second defendant had accepted such discrepancies subsequently, the first defendant is not liable to pay any interest for the period of delay.

16. With regard to the third consignment Mr. Dutt submits that, the document was not negotiated within the meaning of UCP 500 by the third defendant. Mere acceptance of bills by the third defendant is not negotiation within the meaning of Article 10(b)(ii) of UCP 500. Moreover, the first defendant had received the documents in respect of the third consignment after expiry of the validity period of the Letter of Credit. The third defendant had received the documents on November 22, 1998 while the validity of the Letter of Credit had expired on November 15, 1998.

17. Mr. Dutt refers to various answers given by the witness in examination and in cross-examination to submit that the first defendant is not liable to pay any damages to the plaintiff.

18. The first issue is taken for consideration.

19. The plaintiff as an exporter had acted in terms of a tripartite entered into by

the plaintiff, the first defendant and the second defendant dated March 5, 1998 being Exhibit "K". The three defendants had acted in terms of such tripartite agreement. The first defendant had opened a Letter of Credit being Exhibit "C" in favour of the plaintiff as the beneficiary thereof with a clause that such Letter of Credit is freely negotiable at any bank in India. The plaintiff in terms of Letter of Credit being Exhibit "C" had approached the third defendant for negotiations. The parties to the suit had transactions founded upon Exhibits "K" and "C". The plaintiff claims delay in receipt of 90 per cent payment of the value of the first two consignments and payment in respect of the third consignment. The plaintiff also claims 10 per cent of the value of the first two consignments from the defendants. The defendants however deny their liability to pay the plaintiff.

20. In such circumstances, the plaintiff having acted in terms of the tripartite agreement dated March 5, 1998 being Exhibit "K" in which the plaintiff and the first defendant as well as the second defendant are parties and the third defendant having acted as a negotiating bank in terms of Exhibit "C" being the Letter of Credit issued by the first defendant at the behest of the second defendant with the plaintiff as the beneficiary thereof, and since the plaintiff claims reliefs with regard to transactions had between the parties founded upon Exhibits "K" and "C", the plaintiff has cause of action against the defendants to realize its claims. The plaint cannot be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908.

21. The first issue is therefore answered in the affirmative and in favour of the plaintiff.

22. For the sake of convenience the second to the sixth issues are taken up together. The second to the fourth issues are issues of relief. The fifth and the sixth issues are of fact. The answer to these issues would depend upon the answer to the question, whether the documents to the three consignments were duly negotiated in terms of Exhibit "C" or not. In addition thereto, the answer to the second issue would also depend upon the relevant clauses of the UCP 500 and Exhibit "C".

23. The plaintiff had exported the first and the second consignments to the second defendant. The second defendant had accepted such export. The second defendant had also waived the so-called discrepancies in the documents. The documents were negotiated by the plaintiff through the third defendant. The first defendant had delayed payment of 90 per cent of the value of the first and the second consignments on the ground of discrepant documents.

24. The plaintiff had despatched the first consignment on May 12, 1998. The plaintiff had submitted documents required under the Letter of Credit being Exhibit "C" with the third defendant on May 12, 1998 itself. These facts appear from Exhibit "D". Exhibit "4" would establish that, the third defendant had by a writing dated May 15, 1998 forwarded the shipping documents for the first consignment to the first defendant. The first defendant by its telex dated May 26,

1998 being Exhibit "1" had noted one discrepancy. The first defendant was of the view that Pre-shipment Inspection Certificate obtained from SGS India Limited instead of SGS Bangladesh Limited was in violation of the terms of the Letter of Credit. By a letter dated May 29, 1998 being Exhibit "2" the third defendant had forwarded a Certificate dated May 28, 1998 of SGS Bangladesh Limited stating that SGS India Limited is a member of the worldwide SGS group as SGS Bangladesh Limited and that SGS India Limited instead of SGS Bangladesh Limited was competent to issue an inspection certificate as an accredited representative of SGS Bangladesh Limited in India. This Certificate of SGS Bangladesh Limited did not satisfy the first defendant. It had called upon SGS Bangladesh Limited by a writing dated June 9, 1998 being Exhibit "7" to verify the signature appearing in the SGS Bangladesh Limited Certificate. By a writing dated June 9, 1998 SGS Bangladesh Limited wrote back to the first defendant stating that its Managing Director had signed the Certificate. By a letter dated July 6, 1998 the second defendant informed the first defendant that it had accepted the discrepancies and had requested the first defendant to pay in terms of the Letter of Credit. The first defendant had thereafter taken time till July 28, 1998 to pay the value of 90 per cent of the first consignment to the third defendant. In such circumstances, there was a delay of 76 days in making payment of 90 per cent of the value of the first consignment.

25. The first defendant had extended the validity period of the Letter of Credit on August 16, 1998 as would appear from Exhibit "G".

26. The plaintiff had thereafter on September 21, 1998 despatched the second consignment to the second defendant. The plaintiff had negotiated the documents relating to the second consignment through the second defendant on September 26, 1998 as would appear from Exhibit "E". A Certificate issued by SGS India Limited along with other documents were submitted for negotiation. The third defendant had forwarded documents in respect of the second consignment to the first defendant on September 6, 1998 as would appear from Exhibit "11". The first defendant by a telex dated October 18, 1998 being Exhibit "14" sought to raise the same discrepancies as that of the first consignment; the discrepancy being that the Pre-shipment Inspection Certificate has been obtained from SGS India Limited instead of SGS Bangladesh Limited or their accredited representative and therefore such certificate was in violation of the terms of the Letter of Credit.

27. The first defendant however had released payment in respect of the second consignment on September 27, 1991 that is after a delay of 357 days.

28. The plaintiff had negotiated the documents relating to the third consignment on November 13, 1998. The Letter of Credit being Exhibit "C" was to expire on November 15, 1998. The third defendant had sent the documents to the first defendant on November 17, 1998. The first defendant had returned the document to the third defendant on November 23, 1998 on the ground that the Letter of Credit had expired on November 15, 1998.

29. So far as the first two consignments are concerned, admittedly the documents had been negotiated by the third defendant and placed for acceptance before the first defendant. On both the two consignments, the first defendant had claimed that the documents were discrepant. On both the two instances, the only discrepancy pointed out was that the Certificate of Inspection issued by SGS India Limited was not in accordance with the terms of the Letter of Credit.

30. The Letter of Credit being Exhibit "C" specifies that in addition to the documents specified in Exhibit "C" a Pre-shipment Inspection Certificate issued by SGS Bangladesh Limited/Lloyds/Bureau Verities or their accredited representative must accompany the original shipping documents at supplier's cost. In respect of the first two consignments, admittedly a Pre-shipment Inspection Certificate contemplated under Exhibit "C" had accompanied the shipping documents. Such Pre-shipment Inspection Certificate had been issued by SGS India Limited. The third defendant by Exhibit "2" had forwarded a Certificate dated May 28, 1998 of SGS Bangladesh Limited stating that SGS India Limited is a member of the worldwide SGS Group and SGS Bangladesh Limited and that SMS India Limited was competent to issue an Inspection Certificate as an accredited representative of SGS Bangladesh Limited in India. Although the first defendant had questioned the signature of such Certificate, SGS Bangladesh Limited by Exhibit "7" had clarified that such Certificate had been issued by SGS Bangladesh Limited. In any event, the second defendant had accepted the so-called discrepancy.

31. The same discrepancy is sought to be noted in respect of the second consignment. When the first consignment had been found not to be discrepant on the basis of such Pre-shipment Inspection Certificate reiteration of such stand by the first defendant is not in good order. Annexure-II to Exhibit "C" allows a Pre-shipment Inspection Certificate by an accredited representative of SGS Bangladesh Limited to be considered as such Certificate to be in terms of Exhibit "C". The first and the second consignments were accompanied by Pre-shipment Inspection Certificate issued by SGS India Limited. Such Pre-shipment Inspection Certificate being in accordance with the terms and conditions of Exhibit "C", there was no discrepancy for the first defendant to contend otherwise.

32. Article 9 of UCP 500 requires an issuing bank to honour an irrevocable Letter of Credit at sight if the credit provides for sight payment. Exhibit "C" allows drafts to be drawn on the first defendant at sight for 100 per cent invoice cost of shipment. Admittedly, there has been a delay of 76 days in respect of the first consignment and 357 days in respect of the second consignment to pay. Such delay in payment is attributable to the first defendant. In such circumstances, the first defendant is liable to compensate the plaintiff for such delay.

33. Article 19 of UCP 500 deals with bank to bank reimbursement arrangements. Amongst others it specifies that an issuing bank of a Letter of Credit shall not be relieved from any of its obligations to provide reimbursement if and when

reimbursement is not received by the claiming bank from the reimbursing bank and that, the issuing bank would be responsible to the claiming bank for any loss of interest if reimbursement is not provided by the reimbursing bank on first demand, or as otherwise specified in the credit or mutually agreed, as the case may be.

34. The first defendant as the issuing bank of Exhibit "C" therefore continues to remain liable for the delay in payment. In this case, there is a delay in payment by the first defendant 90 per cent of the value of the first two consignments and such delay. The plaintiff claims US \$ 10,321 and US \$ 20,352 on account of interest for such delay. By two several telex messages both dated April 23, 2001 being part of Exhibit "19" the third defendant had demanded a sum of US \$ 5,820 and US \$ 13,770 in respect of the delay in payment of the two consignments. In view of such demand, the plaintiff will be entitled to a decree for the aggregate of US \$ 5,820 and US \$ 13,770 being US \$ 19,590 on account of interest for delay in payment of the 90 per cent value of the first two consignments against the first and the second defendant jointly and severally. The first defendant as the issuing bank and the second defendant as the importer are liable to pay the same to the plaintiff.

35. The plaintiff has a claim of 10 per cent of the value of the first two consignments as they remain unpaid. The first defendant contends that, 10 per cent is not payable as the terms of the Letter of Credit remains unfulfilled.

36. The third defendant had demanded the 10 per cent value of the first two consignments from the first defendant by two telex messages dated April 23, 2001 being part of Exhibit "19". The aggregate of the 10 per cent value of the first two consignments is US \$ 23,750.

37. Additional Condition 2 of the Letter of Credit being Exhibit "C" stipulates that 10 per cent payment of contract would be made to the beneficiary after completion of erection and commissioning of the plant and after 30 days from the date of successful trial run of the plant. This condition does not require any document to be presented in support thereof. Article 13(c) of UCP 500 states that if a credit contains conditions without stating the document(s) to be presented in compliance therewith, banks will deem such conditions as not stated and will disregard them. Therefore, under Article 31(c) of UCP 500 the first defendant is obliged to deem the Additional Condition 2 of Exhibit "C" as not stated and is also obliged to disregard it. The first defendant having paid the 90 per cent albeit late is liable to pay the 10 per cent of the value of the first two consignments also. The second defendant is also liable as the importer.

38. The plaintiff will, therefore, be entitled to a decree for US \$ 23,750 against the first and the second defendants jointly and severally.

39. So far as the third consignment is concerned, the first defendant denies liability to pay on two grounds. First being that, the documents with regard thereto were not received by the first defendant within the validity period of the

letter of credit being Exhibit "C". The second ground is that, the third defendant did not negotiate the documents within the meaning of Article 10(b)(ii) of UCP 500.

40. Article 10(b)(ii) of UCP 500 is as follows:-

"ii. Negotiation means the giving 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 a negotiation."

41. The third defendant had acted as the negotiating bank in term of Exhibit "C". Exhibit "C" allows it to be freely negotiable by any bank in India. The third defendant had acted as the negotiating bank in respect of the first two consignments. In respect of the third consignment, the third defendants had negotiated the documents on November 13, 1998. The Letter of Credit being Exhibit "C" had expired on November 15, 1998. Under cover of writing dated November 17, 1998 the third defendant had sent the documents negotiated under Exhibit "C" to the first defendant. This has been marked as Exhibit "3". Exhibit "3" speaks of the third defendant having negotiated the shipping documents under Exhibit "C" and that they were forwarding such shipping documents negotiated under Exhibit "C" to the first defendant for acceptance. Exhibit "C" also contains a writing that the third defendant had verified the documents. The documents attached to Exhibit "3" are also stated therein. The first defendant had received Exhibit "3". By a telex message dated November 23, 1998 being Exhibit "16" the first defendant stated that there were two discrepancies. The first being that, the Letter of Credit had expired and the second being that there was late negotiation, that is, negotiation after 19 days instead of 16 days. Exhibit "16" requests the third defendant to withdraw the negotiation and not to claim reimbursement. It goes on to say that the first defendant had referred the discrepancies to the drawee and would come back to the third defendant after getting their acceptance. The drawee in the instant case is the second defendant. In support of the contention that the first defendant is not liable to pay, reliance has been placed on Federal Bank Ltd. Vs. V.M. Jog Engineering Ltd. and Others, AIR 2000 SC 3166 : (2001) 106 CompCas 267 : (2000) 4 CTC 687 : (2000) 1 JT 317 Supp : (2000) 6 SCALE 654 : (2001) 1 SCC 663 : (2000) 3 SCR 542 Supp : (2000) AIRSCW 3639 : (2000) 6 Supreme 619 , United Commercial Bank Vs. Bank of India and Others, AIR 1981 SC 1426 : (1981) 1 SCALE 548 : (1981) 2 SCC 766 : (1981) 3 SCR 300 : (1981) 13 UJ 653 and State Bank of India and Another Vs. Emmsons International Ltd. and Another, AIR 2011 SC 2906 : (2011) 4 BC 244 : (2012) 1 CTC 216 : (2011) 9 JT 316 : (2011) 4 RCR(Civil) 662 : (2011) 9 SCALE 68 : (2011) 12 SCC 174 : (2011) 10 SCR 436 : (2011) AIRSCW 4810 .

42. Federal Bank Ltd. (supra) is of the view that, the contract between the issuing banker and the paying or negotiating banker may partake a dual nature. In order to a negotiating bank may claim for reimbursement for any payment which he makes under the Letter of Credit the negotiating banker must obey

strictly the instructions he receives for acting on them he accepts them and thus enter into a contractual relation with the issuing bank.

43. United Commercial Bank (*supra*) is of the view that the documents tendered by the seller must comply with the terms of the Letter of Credit and that the owner owes a duty to the buyer to ensure that the buyer's instructions related to the documents against which the Letter of Credit is to be in order, are complied with.

44. State Bank of India and Anr. (*supra*) notes United Commercial Bank (*supra*) and is of the view that where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate.

45. I find that the third defendant had acted as the negotiating bank for the plaintiff in respect of the first two consignments. It went on to act as a negotiating bank for the third consignment also. There is no distinction between the conduct of the third defendant with regard to the dealings between it and the plaintiff in respect of the first two consignments on one part and the third consignment on the other part in respect of Exhibit "C". With regard to the first two consignments, the third defendant had extended the credit facilities to the plaintiff. In respect of the third consignment no such facility was extended. Such conduct or arrangement between the plaintiff and the third defendant in my view, does not allow an inference that the third defendant did not negotiate the documents of the third consignment or did not act as the negotiating bank under Exhibit "C" more so when the correspondence exchanged between the first and the third defendant as bankers refers to the third defendant as the negotiating bank.

46. In the present case the third defendant had represented itself to be a negotiating banker to the first defendant for the third consignment. Contemporaneously the first defendant does not dispute such position. The correspondence exchanged between the parties for the third consignment being Exhibit "3" by which the claim for reimbursement was made states that the third defendant is the negotiating banker. In response thereto, the first defendant by its telex message dated November 23, 1998 being Exhibit "19" did not dispute that the third defendant had acted as the negotiating banker. The contention that the third defendant did not act as a negotiating bank in terms of UCP 500 for the third consignment ought not to be allowed to be raised in the instant case.

47. The Court of Appeal in Fortis Bank Sa/NV and Anr. (*supra*) notes that there has been no change of practice since UCP 500 while dealing with documents under UCP 600. Construing Article 16(c) of UCP 600 it is of the view that an issuing bank must hold the documents in accordance with the instructions of the presenter or return them promptly and without delay. An issuing bank has to be comply with an option that it chooses. An issuing bank has to be determine whether or not the documents conformed to the Letter of Credit. In making such

decision it may reject the documents. If it does, then it cannot be entitled to retain the documents as it is implicit in rejection that it has refused the acceptance.

48. Similar view has been expressed in *Credit Industrial et Commercial* (supra).

49. In the present case, the first defendant had issued the telex message dated November 23, 1998 being Exhibit "16" refusing negotiation on the grounds stated therein. The first ground of refusal is the expiry of the Letter of Credit. The documents were negotiated by the third defendant on November 13, 1998 within the validity period of the Letter of Credit. There is no basis for the first of refusal. The second ground is also not available to the first defendant as there was no delay or late negotiation. Moreover, Exhibit "16" goes on to say that the first defendant had referred the discrepancy to the drawee and would rebut to the third defendant after getting the acceptance of the drawee. Exhibit "16" does not demonstrate that the first defendant had refused negotiation. The first defendant has taken a stand to refuse negotiations on the ground of discrepancies while at the same time stating that the so-called discrepancies have been referred to the drawee. The first defendant did not return the documents to the third defendant on the basis of the so-called refusal at Exhibit "16". Exhibit "16" in my reading could not be termed as a refusal.

50. The plaintiff and the third defendant had acted in terms of the Letter of Credit with regard to the third consignment. The first defendant did not refuse the negotiation unambiguously. In such circumstance, therefore, there being no valid refusal, the first defendant is liable to pay for the value of the third consignment. The value of the third consignment is US \$ 3,41,943. The value has not been disputed by the defendants. The plaintiff had made over the shipping for onward transmission to the first defendant in respect of the third consignment. The first defendant had accepted the same. Such documents would contain the value of the goods. The plaintiff remains unpaid. The plaintiff will, therefore, be entitled to a decree for US \$ 3,41,943 from the first and the second defendants jointly and severally.

51. In view of the discussions above, the first issue is answered in the affirmative and in favour of the plaintiff.

52. The second issue is answered in the affirmative and the in favour of the plaintiff and to the extent as indicated.

53. The fourth, fifth and sixth issues are answered in the affirmative and in favour of the plaintiff.

54. So far as the seventh issue is concerned, the transactions between the parties are commercial in nature. The plaintiff is entitled to interest on the sum as decreed. The plaintiff has claimed interest at the rate of 20 per cent per annum. Keeping in view that the transactions between the parties are commercial in nature, the plaintiff will be entitled to a decree at the rate of 8 per

cent on the sum receivable by it from the first and the second defendants from the date of filing of the suit until realization. The plaintiff has put in Court-fees of Rs. 10,000/-. The plaintiff will be entitled to a decree for costs assessed at Rs. 50,000/- from the first and the second defendants.

55. C.S. No. 254 of 2001 is decreed accordingly.

56. The department will draw up and complete the decree expeditiously.