(1980) 02 DEL CK 0030

In the Delhi High Court

Case No : I.A. No. 3710 of 1979 in Suit No. 1419 of 1979

Interads Advertising (P.) Ltd. APPELLANT

Vs

Palmex Enterprises. RESPONDENT

Date of Decision : 29-02-1980

Acts Referred:

Citation : (1983) 53 CompCas 550

Hon'ble Judges : Sultan Singh, J

Bench : Single Bench

Judgement

1. This is plaintiff''s application under O. 39, rr. 1, 2 and 3 read with s. 151 of the CPC, 1908, in a suit for declaration and injunction for restraining defendant No. 3 from making any payment against documents received under the Letter of Credit No. ND/1909, dated August 20, 1979, favoring M/s. Palmex Enterprises, Singapore, defendant No. 1, and also restraining it from having recourse to the margin money covered by the said letter of credit. The relevant facts are : the plaintiff entered into a contract with defendants Nos. 1 and 2 for the purchase of brass scrap (honey grade) of the value of Rs. 25,00,000, the goods were to be shipped from Singapore to Bombay till September 30, 1979, a certificate with respect to quality and weighment that the goods were of honey grade from an independent surveyor of international repute and standing, well qualified and experienced for inspection an survey of such a commodities was to be issued and full set of clean "on board" bill of lading drawn or endorsed to the order of the Laxmi Commercial Bank Ltd. showing fright prepaid and marked "notified Lakshmi Commercial Bank Ltd." was to be supplied with other documents.

2. The plaintiff applied to the Lakshmi Commercial Bank Ltd., defendant No. 3, for the opening of a letter of credit in favor of defendant No. 1 and defendant No. 3 opened Letter of Credit No. ND/1909, dated August 20, 1979, by a cable to the negotiating bank, defendant No. 9, on August 20, 1979, opening an irrevocable confirmed letter of credit. The following documents were required under the said letter of credit :

"Signed invoice in quadruplicate in the name of openers certifying merchandise of Singapore origin, full set of clean on board loading drawn or endorsed to the order of Lakshmi Commercial Bank Ltd. showing freight prepaid and marked notified Lakshmi Commercial Bank Ltd., certificate of origin and packing list in quadruplicate required certificate of weight and quality issued by any independent surveyors, etc."

3. It appears that the documents relating to this shipment were received by the negotiating bank and copies were also received by defendant No. 3 and the plaintiff. The plaintiff on September 14, 1979, informed defendant No. 3 that there were serious discrepancies in the documents and these were contrary to the express conditions of the letter of credit. It was stated that there was no certificate of quality issued by any independent surveyor and that the certificate of quality issued by any independent surveyor and that the certificate submitted by the beneficiary was silent regarding the quality of the goods. By letter dated October 11, 1979, it was further brought to the notice of defendant No. 3 that the bill of lading was further brought to the notice of defendant No. 3 that the bill of lading was also not in accordance with the directions contained in the letter of credit. The plaintiff, Therefore, informed defendant No. 3 that the documents pertaining to the said goods, i.e., the bill of lading, certificate of weight and quality, etc., were not acceptable and that the same be returned on account of the various discrepancies. On September 17, 1979, the plaintiff also received a cable from defendant No. 1 that the vessel "Oh dai" in which the goods were alleged to have been shipped to the plaintiff had collided with an unknown submerged object as a result where of the ship had been abandoned. The plaintiff thus prays that they are not bound to pay for and that defendant No. 3 be restrained from demanding any payment from the plaintiff and also from making any payment against the documents under the said letter of credit. On November 28, 1979, by an ex parte injunction, defendant No. 3 was restrained from making payment and from having recourse to the margin money covered by the said letter of credit till further orders. Defendant No. 3 in reply to the suit and the application submits that it has made payment under the letter of credit and, Therefore, the suit for injunction has become infructuous, that the documents were in complete confirmation with the terms and conditions of the letter of credit and there was no discrepancy in the documents. For the grant of a temporary injunction a person seeking such an injunction must satisfy (i) that there is a serious question to be tried in the suit and that on the facts before the court there is a probability of his being entitled to the relief asked for by him, (ii) that the court''s interference is necessary to protect him from irreparable injury, and (iii) that the balance of convenience is in his favor. Prima facie this means a substantial question raised bona fide which at first sight needs investigation and decision. The plaintiff appears to have satisfied this. The agreement entered into between the parties is subject to the Uniform Customs and Practice for Documentary Credits. Article 3 of the brochure says : An irrevocable credit constitutes a definite undertaking of the issuing bank provided that the terms

and conditions of the credit are complied with. Article 7 reads : banks must examine all documents with reasonable care to ascertain that they appear on their face value to be in accordance with the terms and conditions of the credit. Documents which appear on their face to be inconsistent with one another will be considered as not appearing on their face to be in accordance with the terms and conditions of the credit, Article 19 provides that unless specifically authorised in the credit, bills of lading issued by forwarding agents will be rejected. Article 20 further provides that loading on board may be evidenced either by a bill of lading bearing wordings indicating loading on board a named vessel or by means of mutation to that effect on the bill of lading signed or initialled and dated by the carrier or his agent and the date of this notation shall be regarded as the date of loading on board the named vessel. A reference to the bill of lading in the present case disclosed that there is rubber stamp "shipped on board". It is neither signed nor initialled by anybody. The word "Singapore" is printed against the column "fright payable at" and there is also a rubber stamp "freight prepaid". Both are contradictory. It thus appeals that the bill of lading is not in accordance with the letter of credit. The letter of credit also requires the certificate of weight and quality issued by an independent surveyor. The certificate issued by the UNI Marine Service, Singapore, reads as under :

"Certificate of weight and quality :

This is to certify that we, the undersigned Independent Surveyors, did on August 11, 1979, onwards, at the request of the shippers, M/s. Palmex Enterprise, Singapore, attend at their supplier''s premises for the purpose of surveying a consignment of Brass Scrap (honey grade) and wish to report as follows :

''At the supplier''s premises, one lot of second hand empty steel drums were put up for survey. The empty drums were weighed and the weight ascertained to be average 17 kgs. each. Subsequently on a tested platform scale, the brass scrap (honey grade) were weighed and ascertained to be of 267 kgs. and then packed into the already weighed empty drums. The drums were then pressed at the top side to prevent spillage of the brass scrap (honey grade) INTEB BOMBAY I-953.

4. The weight which was achieved as a result of this inspection are as follows :

Tare wt. of 953 drums x 17 kgs. each 16.201 m. tons

Gross wt. of 953 drums x 284 kgs. each 270.052 m. tons

Net wt. of 953 drums x 267 kgs. each 254.451 m. tons

5. We understand this consignment of brass scrap (honey grade) is consigned to the buyers M/s. Interads Export Division, New Delhi, from port of Singapore by vessel, oh dai, for discharge at Bombay, This certificate is issued to the best of our knowledge and belief.

Uni Marine Services,

illegible

(Sd.) ....

Independent surveyors''."

6. This certificate does not certify the quality of the goods. It does not disclose who conducted the survey and whether the person conducting the survey was a qualified person. The alleged surveyors on August 11, 1979, appear to have attended the supplier''s premises for surveying. It nowhere certifies that the goods packed in the alleged drums were the brass scrap (honey grade), i.e., the contracted goods. This certificate is issued to the best of knowledge and belief of the alleged surveyors. Prima facie this is not a certificate certifying the quality of the goods. It thus appears that defendant No. 3 or the encashing bank did not comply with the terms of the letter of credit. Documents on their face thus appear to be inconsistent with the terms and conditions of the credit.

7. Under the Uniform Customs and Practice for Documentary Credit, it is the responsibility of the bank issuing the letter of credit or the encashing bank to examine the documents with reasonable care to ascertain that they appear to be in accordance with the terms and conditions of the credit. From the two documents, i.e., the bill of lading and the certificate of weight and quality besides others which are essential conditions of the letter of credit it appears prima facie that the documents were not examined properly and they appear to be inconsistent with terms of the letter of credit. Defendant No. 3 alleged that the payment has been made but the plaintiff does not accept this position. It is not necessary to go into this question at this stage. Even if payment has been made the question would be whether defendant No. 3 alleged that the payment has been made but the plaintiff does not accept this position. It is not necessary to go into this question at this stage. Even if payment has been made the question would be where defendant No. 3 is entitled to demand the same from the plaintiff and further whether defendant No. 3 can have recourse to the margin money covered by the letter of credit in question. The plaintiff is likely to suffer if injunction is refused. The balance of convenience also appears to be in favor of the plaintiff. If the defendant bank has not complied with the terms of the letter of credit, the plaintiff is not to suffer. The counsel for the defendant referred to Tarapore and Co. Vs. V/O Tractoroexport and Another, and submitted that no injunction can be granted. In the case before the Supreme Court the dispute was between buyer and the seller as to whether the delivered goods were not of the contracted quality. Twenty-five per cent. of the credit had already been paid by the encashing bank to the supplier while the 75 per cent. of the credit was payable subsequently. The buyer after taking delivery of the goods claimed an injunction restraining the encashing bank from making payment. The Supreme Court held that the encashing bank was not concerned with the disputes between the buyer and the seller and, Therefore, there was no ground to restrain the bank from making payment under the credit. In the case before me the dispute is whether the bank issuing the letter of credit has complied with the terms of the letter of credit. The cable advising the issue of the letter of credit mentions a

number of documents as express conditions of the credit. These are the essential terms of the letter of credit. There terms, it appears, have not been complied with by the issuing bank or the encashing bank. Prima facie it appears that defendant No. 3 is not entitled to make payment against the said documents under the said letter of credit. I, Therefore, confirm the ex parte injunction dated November 28, 1979, and restrain defendant No. 3 from having recourse to the margin money covered by the Letter of Credit No. ND/1909, dated August 20, 1979, favoring defendant No. 1 and also from making any payment against the documents received under the said letter of credit till the decision of the suit. Parties are left to bear their own costs.

