(2000) 05 KL CK 0011

In the High Court Of Kerala

Case No : A.S. No. 215 of 1988

Kerala State Handloom Development Corporation APPELLANT

Vs

State Bank of India RESPONDENT

Date of Decision : 22-05-2000

Acts Referred:

Citation : AIR 2001 Ker 175

Hon'ble Judges : K. Narayana Kurup, J;D. Sreedevi, J

Bench : Division Bench

Advocate : M. Ramesh Chander and P. Reghunath, for the Appellant; K. Jayakumar and A.M. Pratap Singh, for the Respondent

Final Decision : Dismissed

Judgement

K. Narayana Kurup, J.—Plaintiff is the appellant. The appeal is directed against the judgment and decree of the Subordinate Judge''s Court, Thalassery in O.S. No. 261/83 dismissing the suit for recovery of a sum of Rs. 1,69,766.15. Brief facts necessary for the disposal of the appeal are as follows:

2. The plaintiff/appellant is engaged in the business of manufacture and export of handloom goods and readymade garments. One M/s. S. Oliver of West Germany placed orders for the supply of several items of readymade garments with the plaintiff company some time in the year 1979. The purchaser, on the request made by the appellant plaintiff got their bankers M/s. Dresdner Bank, West Germany to issue an irrevocable Letter of Credit for an amount of D.M. 17160. Eventually the Dresdner Bank opened Letter of Credit No. 56 I 20048 dated 19-12-1979 through the respondent bank and a copy of the said letter of credit was forwarded to the appellant company. The terms and conditions of the letter of credit were subsequently modified and the modified letter of credit showed the following conditions:

(a) Amount of FOB value was DM 19385, and further was to include the freight paid.

(b) Shipment date not letter than 15-3-80.

(c) Expiry date of the letter of credit was 29-3-80.

Changes in the letter of credit were duly notified to the appellant company by the respondent bank. In pursuance of the contract entered into between the foreign buyer, viz. M/s. S. Oliver and the appellant company, the goods were taken to Madras after complying with the formalities governing the export of handloom goods and textiles and the same were got Inspected by the representatives of the foreign purchaser as per authorisation issued by them. The goods were subsequently handed over to M/s. Singapore Air Lines through the appellant''s shipping agent and Airway Bill No. 2789757 dated 14-3-1980 was obtained. Drafts were raised on the Dresdner Bank demanding payment at sight to State Bank of India and all the documents prescribed under the conditions of the letter of credit were handed over at the counters of the respondent bank on 20-3-1980. The respondent bank on receipt of the drafts and the documents and as called upon them by the foreign bank, viz. M/s. Dresdner Bank as per the terms of the irrevocable letter of credit, credited an amount of Rs. 1,09,052.70 in the accounts maintained by the appellant company subject to the provisions of Uniform Exports and Trade Practice, 1974, International Chamber of Commerce Company Ltd. No. 290. Subsequently, the respondent bank forwarded the documents and the drafts to M/s. Dresdner Bank, West Germany for claiming reimbursement. However, the letter,of credit opening bank, viz. Dresdner Bank refused to effect payment on the ground that according to the purchaser, delivery has not been effected in compliance with the terms of the letter of credit. It further turned out that M/s. Dresdner Bank was not prepared to pay the money against the conditions of the letter of credit to the respondent bank. Consequently, the respondent bank, on 4-7-1980 debited the appellant''s account With an amount of Rs. 1,17,080.15 being the amount originally credited along with interest and other charges thereon. After effecting the debit as noted above, the appellant company was corresponding with the German buyer and attempting to get the amount paid, with no success. In the year 1982 the appellant issued a suit notice to the respondent alleging that making of the debit entry was not proper, to which a reply was sent by the respondent justifying the entry. It was thereafter the instant suit was filed on 26-7-1983 for a decree against the respondent for the amount shown in the plaint with future interest till realisation and costs. The respondent filed a written statement justifying the debit entry and repudiating their liability to pay any amount to the appellant. On the respective contentions the trial Court framed seven issues. The evidence in the case consists of Exts. A1 to A10 and B1 to B13. No oral evidence was adduced by the parties. The trial Court on appreciation of the evidence brought on record, dismissal the suit and hence this appeal.

3. Heard Counsel on both sides. The question that falls for consideration is whether the trial Court was right in dismissing the suit after entering a finding that the respondent had no obligation to the appellant in respect of the letter of

credit negotiated ''under reserve'' and further that the respondent has every right to debit the plaintiffs account on the return of the document unpaid. On the scrutiny of the evidence and materials brought on record. We have no hesitation in answering this question in the affirmative. It is not in dispute that it was at the request of the appellant that the respondent negotiated the documents ''under reserve''. The drafts and other documents were duly forwarded by the respondent to the letter of credit opening bank for payment. However; the said bank returned the documents without effecting payment since, according to it, the documents forwarded were not strictly in accordance with the terms of the letter of credit. Upon return of the documents the respondent in conformity with the commercial practice in respect of the negotiations of instruments which are returned unpaid, debited the appellant''s account with the amount and other charges incurred for which the documents were negotiated at the instance of the appellant. In our opinion, the respondent was perfectly within its right to debit the appellant''s account on return of the documents unpaid by the drawer under the letter of credit and that the appellant has no right to contend that the respondent was not justified in doing so, particularly in view of the fact that they were negotiated ''under reserve''. The effect of a payment made ''under reserve'' is no longer res-integra as it has received the attention of the Hon''ble Apex Court in the decision reported in United Commercial Bank Vs. Bank of India and Others, at 1440 wherein it has been held as follows:

...A payment ''under reserve'' is understood in banking transactions to mean that the receipient of money may not deem it as his own but must be prepared to return it on demand....

Credit facility given by the respondent bank ''under reserve'' means that the appellant cannot treat the money as its own and they will have to return it on demand made by the respondent. At the risk of repetition, we may observe that the payment in question was ''under reserve'' and the respondent was only negotiating on behalf of the appellant and when the appellant''s instruments were not honoured, the respondent cannot be made liable. The credit facility given by the respondent to the appellant will be cleared only on payment of the amount and such payment never took place in the instant case, which resulted in a debit entry being made in the accounts of the appellant. The respondent negotiated the documents mainly on the representation of the appellant that the documents lodged were in accordance with the terms of the letter of credit. Even so, it negotiated the documents ''under reserve'' making it clear that in the vent of the documents not being honoured, the respondent would debit the appellant account with the amount advanced when the documents were negotiated. In negotiating the documents, the respondents acted only as the appellant''s bank for the purpose of transmission and collection of the proceeds thereof from the letter of credit opening bank. On the return of the documents unpaid. It was entitled to realise the amount paid to the appellant by debitting the appellant''s amount. That apart, it has to be noted that the respondent had no obligation under the letter of credit of which the appellant was the beneficiary. Besides, the respondent had no liability in terms of the Uniform Customs and Trade Practices in respect of the letter of credit opened in favour of the appellant. On the return of the documents by the letter of credit opening bank, we are of opinion that the appellant''s remedy was to proceed against the said bank and the buyer M/s. S. Oliver for settlement of the claim. Added to this, we find no subsisting contract express or implied between the letter of credit opening bank and the respondent. The result, therefore, is that the appellant is not entitled to claim the plaint amount from the respondent. None of the documents produced along with the plaint supports the claim of appellant. Therefore, the trial Court was right in dismissing the suit negativing the claim of the appellant. Accordingly, we confirm the Judgment and decree of the trial Court and dismiss this appeal.