

(2012) 02 DEL CK 0597

In the Delhi High Court

Case No : Regular First Appeal No. 71 of 2004

M/s T.T. Limited

APPELLANT

Vs

Sonali Bank and Another

RESPONDENT

Date of Decision : 22-02-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 96

Citation : (2012) 02 DEL CK 0597

Hon'ble Judges : Valmiki J Mehta, J

Bench : Single Bench

Advocate : Shilpi Jain Sharma, for the Appellant;

Final Decision : Dismissed

Judgement

Valmiki J Mehta, J.—The challenge by means of this Regular First Appeal (RFA) filed u/s 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 11.11.2003 dismissing the suit filed by the appellant/plaintiff for recovery of US Dollars 11,982.82/- i.e. Rs. 5,57,201/-.

2. The facts of the case are that the appellant/plaintiff is the seller and exporter of cotton yarn. The defendant No. 2/respondent No. 2 is a buyer in Bangladesh. Defendant No. 1/respondent No. 1 is a Bank which at the request of defendant No. 2/respondent No. 2 issued four letters of credit in favour of the appellant/plaintiff. The subject suit came to be filed, inasmuch as, there were delays totaling to 648 days in the realization of the amount under the letters of credit, and the appellant/plaintiff claimed that since it had negotiated the letters of credit with its bank-M/s Oriental Bank of Commerce, Overseas Branch, New Delhi and therefore it had to pay interest for the delayed periods totaling to 648 days. The suit was filed claiming interest for the delay in crediting the amounts of letters of credit.

3. I may note that letters of credit issued in this case contains two clauses which restrict the liability of respondent No. 1-bank for payment of interest only upto

the period of 90/120 days. The relevant clauses in this regard read as under:-

(2) Drafts are Payable at any time within 120 days from the date of Negotiation of documents. In case drafts are paid before maturity date interest for the usance period only to be paid from the date of Negotiation of shipping documents to the date of payment but maximum for 120 days.

(3) Interest for usance period is on opener's account and will be calculated at rate prevailing in India. but not exceeding "LIBOR" per annum from the date of negotiation of documents to the date of payment but maximum for 120 days.

(underlining added)

4. The trial Court has dismissed the suit relying on the aforesaid clauses by making the following observations:-

7. Usance means the time allowed for the payment of foreign bills of exchange. In the present case, admittedly as per the conditions of credits it was 90 days in respect of the credit Ex. PW1/4 and Ex. PW1/6 and 120 days in respect of credit Ex. PW1/2. The interest for usance period was provided for. There was no provision in the Letters of Credit for any interest beyond usance period. The following portion of the reply to the Counsel for the plaintiff from the Counsel for defendant No. 1 needs to be reproduced namely:-

When the negotiating bank claimed an amount of US Dollars 10.353.82 as 24% interest for delayed payment of the bills my client duly informed the negotiating bank that the import bills were duly paid as per terms and conditions of the L.C.s and as such the bank owe no further payment to your client.

XXX XXX XXX

10. The amount that may have been payable by the plaintiff under an agreement with the negotiating banker could be of no consequence to the issuing banker. The liability of the issuing banker was only restricted under the terms of the credit and in respect of a negotiable credit which has been actually negotiated the liability of the issuing banker was towards the negotiating banker and the beneficiary namely the plaintiff could not step into the shoes of the negotiating banker for any amount that the negotiating banker may believe to be payable by the issuing banker to the negotiating banker.

5. Learned counsel for the appellant sought to rely upon certain articles of the Uniform Customs and Practices for Documentary Credits (1993 Revision), ordinarily referred to UCP 500, to argue that respondent No. 1/bank is liable even for the period of delay beyond 120 days. The articles which have been relied upon by learned counsel for the appellant are the articles 9, 10 and 19, which read as under:-

Article 9. Liability of Issuing and Confirming Banks

a. An irrevocable Credit constitutes a definite undertaking of the Issuing Bank,

provided that the stipulated documents are presented to the Nominated Bank or to the Issuing Bank and that the terms and conditions of the Credit are complied with:

- i) if the Credit provides for sight payment-to pay at sight;
- ii) if the Credit provides for deferred payment-to pay on the maturity date(s) determinable in accordance with the stipulations of the Credit;
- iii) if the Credit provides for acceptance;
 - (a) by the Issuing Bank-to accept Draft(s) drawn by the Beneficiary on the Issuing Bank and pay them at maturity, or
 - (b) by another drawee bank-to accept and pay at maturity Draft(s) drawn by the Beneficiary on the Issuing Bank in the event the drawee bank stipulated in the Credit does not accept Draft(s) drawn on it, or to pay Draft(s) accepted but not paid by such drawee bank at maturity;
- iv) if the Credit provides for negotiation-to pay without recourse to drawers and/or bona fide holders, Draft(s) drawn by the Beneficiary and/or document(s) presented under the Credit. A Credit should not be issued available by Draft(s) on the Applicant. If the Credit nevertheless calls for Draft(s) on the Applicant, banks will consider such Draft(s) as an additional document(s).

Article 10. Types of Credit.

- a. All Credits 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 it is available only with the Issuing Bank, all Credits must nominate the bank (the "Nominated Bank") which is authorised to pay, to incur a deferred payment undertaking, to accept Draft(s) or to negotiate. In a 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. Negotiation means the giving of value for Draft(s) and/or document(s) by the bank authorised to negotiate. Mere examination of the documents without giving of value does not constitute a 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 of 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 any 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.

Article 19. Bank-to-Bank Reimbursement Arrangements

a. If an Issuing Bank intends that the reimbursement to which a paying, accepting or negotiating bank is entitled, shall be obtained by such bank (the "Claiming Bank"), claiming an another party (the "Reimbursing Bank), it shall provide such Reimbursing Bank in good time with the proper instructions or authorization to honour such reimbursement claims.

b. Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank.

c. An Issuing Bank 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.

d. The Issuing Bank shall 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.

e. The reimbursing Bank's charges should be for the account of the Issuing Bank. However, in cases where the charges are for the account of another party, it is the responsibility of the Issuing Banks to so indicate in the original Credit and in the reimbursement authorization. In cases where the Reimbursing Bank's charges are for the account of another party they shall be collected from the Claiming Bank when the Credit is drawn under. In cases where the Credit is not drawn under, the Reimbursing Bank's charges remain the obligation of the Issuing Bank.

6. In my opinion, the argument as urged on behalf of the appellant by its counsel relying upon the aforesaid articles carries no weight because the liability of the bank issuing the letters of credit is a contractual liability and such contractual liability can always be restricted by a contractual clause. The aforesaid clauses of UCP 500, relied upon by learned counsel for the appellant do not show that the issuing bank must take more liability than was otherwise contracted for. The contractual liability in the present case is the amount of letters of credit along with interest for the period of maximum 90/120 days, as the case may be. For the period beyond 90/120 days it is the contractual term in the letters of credit making it clear that for the delays occurred only the applicant of the letters of credit, i.e. buyer in Bangladesh defendant No. 2/respondent No. 2, will be liable for that claim of interest beyond the period of 90/120 days.

7. Therefore, in my opinion, the trial Court was fully justified in dismissing the suit against defendant No. 1/respondent No. 1, inasmuch as, the liability of defendant No. 1/respondent No. 1 was limited to the claim of interests upto the

period of 90/120 days, and which interest amounts have been already paid to the appellant/plaintiff.

8. In my opinion, the arguments as urged on behalf of learned counsel for the appellant/plaintiff, that the trial Court has wrongly dismissed the suit against defendant No. 2/respondent No. 2, is correct and merits acceptance. The defendants/respondents were ex-parte before the trial Court and have also not appeared before this Court. The appellant/plaintiff filed its affidavit and proved on record the factum of the sale of goods to the buyer/defendant No. 2/respondent No. 2. The factum of sale cannot be disputed because, the sale was made to defendant No. 2/respondent No. 2 that is why the letters of credit were paid. Therefore, once it has been established on record that there is delay beyond the usance period for payment of the amount under the letters of credit, consequently, the appellant/plaintiff will be entitled to the amount which it had to pay to its own bank towards interest for the relevant periods of delays. I may note that the appellant/plaintiff filed and exhibited before the trial Court a certificate of its bank as Ex. PW1/10 and which certificate shows the number of days of delays as also the fact that interest has been charged from the appellant/plaintiff at 25% per annum, which was the prevalent interest. However, I note that the appellant/plaintiff claims only 24% interest which was paid during the relevant period.

9. The appellant/plaintiff has also filed before this Court today an affidavit containing a chart (Annexure A) which gives the relevant bill and its details including its amounts and the interest paid in terms of rupees calculated @ 24 % per annum. A reference to this affidavit and Annexure A thereto shows that the appellant/plaintiff will be entitled to an amount of Rs. 4,42,171/- which it has paid to its bank namely, Oriental Bank of Commerce, Overseas Branch, New Delhi for the period of delays.

10. In view of the above, the appeal is partially accepted. The suit against defendant No. 1/respondent No. 1 stands dismissed in terms of impugned judgment and decree, however, the suit against defendant No. 2/respondent No. 2 is decreed for a sum of Rs. 4,42,171/- along with interest @9% per annum simple for the pre suit period from 18.4.2000 till the date of filing of the suit, pendente lite and future interest till realization. Appellant will be entitled to costs. Decree sheet be prepared. Trial Court record be sent back.