
(2014) 04 CAL CK 0136
In the Calcutta High Court
Case No : C.S. No. 12 of 2000

Nagreeka Exports Ltd.

APPELLANT

Vs

Pubali Bank Ltd. and Others

RESPONDENT

Date of Decision : 11-04-2014

Acts Referred:

Citation : (2014) 3 CHN 487

Hon'ble Judges : Debabrata Mookerjee, J

Bench : Single Bench

Advocate : Debojyoti Dutta and Mr. S.N. Pandey, Advocate for the Appellant; Retobroto Mitra, Mr. S.S. Bose, Mr. S. Dhar, and Mr. I. Karfa, Advocate for the Respondent

Judgement

Debangsu Basak, J.—The plaintiff sold Indian Parboiled Rice (non Basmati) to the Defendant No. 3. The payment was secured by an irrevocable letter of credit. The Defendant No. 3 caused an irrevocable documentary letter of credit dated December 28, 1998 for US \$ 22,770/- to be opened by the Defendant No. 1 with the plaintiff being the beneficiary thereof. The letter of credit was advised to the plaintiff by the Defendant No. 2. The plaintiff exported the contracted goods to the Defendant No. 3. The Defendant No. 4 negotiated the letter of credit and presented the documents to the Defendant No. 1. According to the plaintiff, the Defendant No. 1 wrong fully dishonoured the letter of credit. Furthermore, according to the plaintiff the Defendant No. 5 wrong fully allowed the Defendant No. 3 to take delivery of the goods. The plaintiff did not receive payment in respect of the goods. The plaintiff, therefore, claimed a decree for US dollars 22,770/- against the Defendant Nos. 1, 3 and 5 jointly and severally to whether with interest.

2. The Defendant No. 1 filed written statement. In the written statement it was claimed by the Defendant No. 1 that, the letter of credit negotiated contained an express condition that, the original set of documents including the original radiation certificate issued by a Government approved reputed agency was

required to be sent to the Defendant No. 1. According to the Defendant No. 1 the provisions of the Uniform Customs and Practice for Documentary Credits, 1993 Revision, International Chamber of Commerce Publication No. 500 (UCP 500) were applicable to the letter of credit concerned. On a true construction of the provisions of the UCP 500, the plaintiff was bound and obliged to produce the original of the radiation certificate. The plaintiff not having done so the Defendant No. 1 rightly pointed out such discrepancy and refused to honour the letter of credit. The Defendant No. 1 informed the Defendant No. 4 by telex dated February 15, 1999 about such discrepancy. The validity of the letter of credit expired on March 2, 1999. The Defendant No. 4 by writing dated March 4, 1999 and March 20, 1999 informed the Defendant No. 1 that the Defendant No. 1 did not agree with the discrepancy noted by the Defendant No. 1. In reply the Defendant No. 1 intimated the Defendant No. 4 that the Defendant No. 3 being the importer of the goods did not come forward to accept the documents with discrepancy mentioned. The Defendant No. 1 informed that it would return the documents to the Defendant No. 4. It was claimed by the Defendant No. 1 that the plaintiff and the Defendant No. 4 allowed the Defendant No. 3 to take delivery of the goods mentioned in the letter of credit without negotiation of the documents. In any event it was claimed that, the plaintiff and the Defendant No. 4 acquiesced to the delivery of the goods to the Defendant No. 3. The Defendant No. 1 denied its liability.

3. The plaintiff examined one witness. The plaintiff also produced various documents in support of its claim. The Defendant No. 1 contested the proceedings. No witness was examined on behalf of the Defendant No. 1.

4. On behalf of the plaintiff it was contended that the refusal of the Defendant No. 1 to honour the letter of credit on the ground of the alleged discrepancy was wrongful. The Defendant No. 1 was obliged to honour the letter of credit when the same was presented. There was no discrepancy between the terms and conditions of the letter of credit and the documents accompanying the letter of credit. The radiation certificate accompanying the letter of credit was of the radiation certificate of the goods. The original radiation certificate was submitted by the plaintiff to the Bangladesh Customs as was required by them for the entry of the goods into one this. The duplicate copy of the radiation certificate was supplied to the Defendant No. 1. The refusal on the part of the Defendant No. 1 was wrongful inasmuch as the letter of credit did not specify that the original of the radiation certificate was required to be submitted. The return of the documents by the Defendant No. 1 to the Defendant No. 4 on March 21, 1999 was wrongful.

5. It was submitted on behalf of the plaintiff that the phrase, "in duplicate" used in clause 9 of the letter of credit was ambiguous, capable of two or three meanings. In support of the contention that, such words were capable of various meanings, on behalf of the plaintiff, reliance was placed on the meaning of such word appearing in Webster's New Collegiate Dictionary, Law Lexicon and

Cambridge Business English Dictionary. It was contended on behalf of the plaintiff that, in case of ambiguity Courts ought to adopt a liberal rule amenable to the commercial sense and in a way reasonable men may interpret the words. In that regard 2005 Volume 1 All England Reporter page 191 (Sirius International v. FAI General Insurance) at page 200 paragraphs 18 and 19 were relied upon.

6. It was next contended that, in case of ambiguity in document the same was required to be construed against the executor. The letter of credit was drafted by the Defendant No. 1 and the ambiguity in the phrase "in duplicate" was required to be construed against the Defendant No. 1. Reliance was placed on All India Reporter Dasarath Gayen Vs. Satyanarayan Ghosh and Others, in that regard.

7. Various provisions of the UCP 500 was relied upon by the plaintiff. On Article 13 of the UCP 500 it was submitted that, such article applied. The Defendant No. 1 ought to have honoured the letter of credit. A photo copy of the document complied with "on their face" requirement of the letter of credit. On behalf of the plaintiff reliance was placed on 1982 Volume 2 All England Reporter page 720 (United City Merchants (Investments) Ltd. & Ors. v. Royal Bank of Canada & Ors.) and 2002 3 AER page 697(Montord Ltd. v. Grundkotter Fleischvertriebs GmbH & Anr.) .

8. On Article 20(c) of the UCP 500 it was submitted that, the same was explanatory and not a mandatory requirement. Such article did not contain any negative stipulation nor did it spell out any punitive consequences. Such article merely clarified that the requirement of a "duplicate" document would be satisfied by the presentation of one original and the remaining number in copies except where the letter of credit itself indicated otherwise. Article 20(c) of the UCP 500 did not contain any negative stipulation. Unless non-compliance was penal in nature it was not mandatory. In that regard reliance was placed on Jagan Nath Vs. Jaswant Singh and Others, .

9. It was contended that, the Defendant No. 5 allowed the Defendant No. 3 to obtain delivery of the goods wrongfully and illegally. Upon coming to know that the Defendant No. 5 allowed the Defendant No. 3 to obtain the delivery of the goods, the plaintiff amended the plaint and incorporated the Defendant No. 5 as a party to the suit. The Defendant No. 5 was also jointly and severally liable as that of the Defendant No. 1. The Defendant No. 3 as the importer and purchaser of the goods was also liable. The Defendant No. 3 obtained the delivery of the goods without paying for the same.

10. On behalf of the Defendant No. 1 it was contended that, a copy of the radiation certificate accompanied the letter of credit. Photocopy of the radiation certificate was at variance with the terms and conditions of the letter of credit particularly clause 9 thereof. Such discrepancy immediately upon being noticed was informed to the Defendant No. 4 within 7 days of the presentation of the documents. The letter of credit subsequently expired on March 2, 1999. The discrepancy was not rectified within the validity period of the letter of credit. That

being the position the Defendant No. 1 was no longer liable after the expiry of the validity period of the letter of credit.

11. The Defendant No. 1 relied upon Article 20 of the UCP 500 and submitted that the meaning of "in duplicate" was defined therein. According to such definition, one of the two radiation certificates was required to be in the original with the other copy being a true and proper copy of the original as understood under article 20 of the UCP 500. It was submitted that, there was no ambiguity in the terms and conditions of the letter of credit. The parties negotiated the letter of credit under UCP 500. The terms and conditions of UCP 500 governed the letter of credit. The plaintiff was not entitled to give any meaning beyond those attached to clause 9 under UCP 500. There being no ambiguity with regard to the words "in duplicate". The judgments cited on behalf of the plaintiff on such score did not have any relevance.

12. In any event it was submitted on behalf of the Defendant No. 1 that, it never parted with the original documents of the goods to any other party. The original documents were returned by the Defendant No. 1 on April 15, 1999. The Defendant No. 1 did not make over the original documents of title to the goods to the Defendant No. 3.

13. I have considered the pleadings, respective submissions of the parties and the evidence on record. The Defendant No. 1 contested the claim of the plaintiff by filing a written statement. No other defendant appeared to contest the proceedings.

14. The documents established that, the plaintiff entered into a contract with the Defendant No. 3 whereby and where under the Defendant No. 3 contracted to buy Indian Parboiled Rice (non-basmati) variety for the value of US dollars 22,700/-. A confirmed, irrevocable letter of credit for such purpose dated December 28, 1998 was opened. The letter of credit was marked as Exhibit "B" in the proceedings.

15. In terms of the contract the plaintiff exported the contracted goods to the Defendant No. 3. The Defendant No. 4 negotiated the letter of credit by presenting the documents mentioned therein to the Defendant No. 1. By the telex dated February 15, 1999 which was marked as Exhibits "C", the Defendant No. 1 refused to pay on the ground that a photocopy of the radiation certificate accompanied the letter of credit instead of the original of the radiation certificate.

16. The plaintiff relied upon gazette notification dated June 14, 1998 of Bangladesh Government which were marked as Exhibits E" and "E1" issued by the Bangladesh Government. The plaintiff relied upon various clauses of such gazette notification which required that the original radiation certificate to be deposited with the Bangladesh Customs for entry of food grains into Bangladesh.

17. The Defendant No. 1 was a banker carrying on business in Bangladesh and governed by the applicable law of Bangladesh. The laws of Bangladesh as would

appear from Exhibits "E" and "E1" required that the original radiation certificate be deposited with the Bangladesh Customs for entry of food grains into Bangladesh. The contracted goods were food grains. That the contracted goods were food grains would appear from the face of the letter of credit itself and the documents accompanying it. Therefore, the insistence on the part of the Defendant No. 1 to have the original radiation certificate accompany the letter of credit was against the governing law of Bangladesh at that point of time. The plaintiff could not be required to act contrary to the applicable laws of Bangladesh. The rejection of the letter of credit by the Defendant No. 1 on the ground that the original radiation certificate did not accompany the letter of credit would mean that the Defendant No. 1 was entitled to have the original radiation certificate along with the letter of credit when the original radiation certificate ought to be with the Bangladesh Customs. The Defendant No. 1 was, therefore, requiring the plaintiff to act contrary to the applicable laws of Bangladesh. Viewed in such perspective the rejection of the Defendant No. 1 was wrongful.

18. Next came the interpretation of the words "in duplicate" used in the letter of credit. Those words are to be read in the context of the laws applicable in Bangladesh. The laws of that country required the original radiation certificate to be deposited with the Bangladesh Customs. Therefore, by no stretch of the imagination whatever may be the interpretation of the terms and conditions letter of credit, those could be interpreted to be contrary to the applicable laws of that country. In such context "in duplicate" used in the letter of credit would not mean that the original radiation certificate should accompany the letter of credit. In such context those words would mean that an authenticated copy of the original radiation certificate ought to accompany the letter of credit. It was not the case of the Defendant No. 1 that an unauthenticated copy of the radiation such certificate accompanied the letter of credit.

19. In *Sirius International* (supra) it was held that while construing a commercial instrument the aim of the inquiry was not to probe the real intention of the parties but to ascertain the contextual meaning of the relevant contractual language. It went on to hold that the inquiry was objective. The question was what a reasonable person, circumstanced as the actual parties were, would have understood the parties to have meant by the use of specific language. The answer to that question was to be gathered from the text under consideration and its relevant contextual sense. Liberalism should if possible be resisted in the interpretive process.

20. In the instant case "in duplicate" was required to be read in the context of the laws applicable in Bangladesh with regard to submission of the radiation certification in original with the Bangladesh Customs for import of food grains in that country.

21. In *Dasarath Gayen* (supra) this Hon^{ble} Court held that, where there was an ambiguity in the terms of a deed, it must be resolved against the executors of

the deed. The letter of credit was opened by the Defendant No. 1. The author of the letter of credit was the Defendant No. 1. The words "in duplicate" in clause 9 of the letter of credit was, therefore, to be read in context of the applicable laws in Bangladesh and as against the Defendant No. 1. It was not for the Defendant No. 1 to contend that, "in duplicate" meant that the original radiation certificate and another authenticated copy of the radiation certificate must accompany the letter of credit. Such insistence would be against the applicable laws of Bangladesh.

22. In *United City Merchants* (supra) it was held that the commercial purpose for which the system of conformed irrevocable documentary credit was developed in international trade was to give the seller of the goods an assured right to be paid before it parted with the control of the goods without risk of the payment being refused, reduced or deferred because of a dispute by the buyer. It followed that the contractual duty owed by an issuing or confirming bank to the buyer to honour the credit notified him on presentation on apparently confirming documents by the seller was matched by a corresponding contractual liability on the part of the bank to the seller to pay him the amount of the credit on presentation of the documents. The bank's duty to seller was only vitiated if there was fraud on the part of the seller.

23. In *Montord Ltd.* (supra) it was held that there was no general nullity exception based upon the concept of a document being fraudulent in itself or devoid of commercial value.

24. In *Jagan Nath* (supra) the Supreme Court was concerned with an election dispute. I do not think that this case was relevant to the issues at hand.

25. The authorities cited were of the view that a confirmed irrevocable letter of credit was good for payment unless fraud vitiated it.

26. In *Montord Ltd.* (supra) a caution was noted that the fraud exception should not be extended to disentitle the person making the demand of payment because it was fraudulent in itself independently of the knowledge of bona fides of the demanding party. Therefore, a letter of credit of the nature in the instant case could be dishonoured by a bank only if it was vitiated by fraud and that to on very narrow grounds. In the instant case it was not the defence of the Defendant No. 1 that the letter of credit stood vitiated by fraud.

27. In view of the refusal of the Defendant No. 1 to honour the letter of credit on presentation being wrongful, the Defendant No. 1 was liable to be the plaintiff.

28. Next came the question of liability of the Defendant Nos. 3 and 5. It appeared from the evidence that the Defendant No. 3 obtained delivery of the goods without the original title to the goods from the Defendant No. 5 upon execution of an indemnity bond in favour of the Defendant No. 5. The Defendant No. 3 was not entitled to obtain the delivery of the goods without the original documents of title. The Defendant No. 3 acted wrongfully and illegally in

obtaining such delivery of goods. The Defendant No. 3 having obtained delivery of the goods was liable to pay the plaintiff in respect thereof. There was no complaint with regard to the quality of the goods. The Defendant No. 3 was, therefore, seeking to make unlawful enrichment at the cost and expense of the plaintiff.

29. The Defendant No. 5 acted wrongfully and illegally in permitting the Defendant No. 3 to obtain delivery of the goods without the documents of title. The conduct of the Defendant No. 5 in allowing the Defendant No. 3 to obtain delivery of the goods without original documents of title being in possession of the Defendant No. 3 was at the very least negligent. The Defendant No. 5 was, therefore, equally liable to the plaintiff having parted with the goods without the original documents of title being produced before it.

30. In such circumstances that would be a decree for the sum of US\$ 22,770/- against the Defendant Nos. 1, 3 and 5 jointly and severally. The plaintiff was entitled to the decree in dollar terms in view of the Defendant No. 1 having undertaken to honour an irrevocable letter of credit for international trade.

31. So far as the claim on account of interest was concerned, the transactions between the parties were commercial. The plaintiff claimed interest at the rate of 24% per annum. The nature of transactions being commercial, it would be just and reasonable that the plaintiff was awarded interest at the rate of 12% per annum on and from February 15, 1999 when the Defendant No. 1 wrong fully rejected the letter of credit until realisation for the sum of US \$ 22,770/-. C.S. No. 12 of 2000 is decreed accordingly. The department is directed to draw up and complete the decree expeditiously.