REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL No. 7513 OF 2009

NATIONAL BANK LIMITED ….. APPELLANT

VERSUS

GHANSHYAM DAS AGARWAL & ORS. ….. RESPONDENTS

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J U D G M E N T

VIKRAMAJIT SEN,J.

1 Notice was ordered in the Special Leave Petition (now Appeal) on 9th July, 2007, but while doing so, this Court had specifically clarified that: "Pending further orders the impugned order passed by the High Court shall continue to operate". The impugned Order decreed the suit filed by Ghanshyam Das Agarwal, who is hereinafter referred to as 'the Exporter', for a sum of USD 352,250 against the Appellant Bank (Defendant No.3

before the Trial Court/Single Judge) in favour of the Bank of India, which is the Exporter's Bank. The remaining claim has been relegated for Trial. The impugned Order further clarifies that upon the payment of these decreetal dues the injunction granted by the Debt Recovery Tribunal by its Order dated April 10, 2002 shall stand vacated; and upon this payment the Orders of injunction passed by the Calcutta High Court on 22nd December, 1999 and 14th January, 2000 shall also stand vacated. The impugned Order goes further to state that the decreetal amount shall be satisfied from out of the funds lying with the American Express Bank Limited, Defendant No.2. To this extent the decreetal amount also stands satisfied. It also transpires that the Defendant No.4, M/s. Sarumeah & Sons, a proprietorship concern, has, consequent on the death of the sole proprietor, been struck off from the array of parties. In any event, since claims are posited on a Letter of Credit furnished by the Appellant, albeit, on the instructions of its now non-existent constituent, namely, M/s. Sarumeah & Sons, (hereinafter nomenclatured as the 'Importer') the latter is really a proforma or at best, a proper party, to the extent that the claim pertains to the subject Letter of Credit (L.C.). The decreetal amount stands satisfied and the Plaintiff/Exporter should be pragmatic enough not to expect any further recovery owing to the legal dissolution of the sole proprietorship concern, i.e., the Importer. In essence,

therefore, the question raised by the Appellant is reduced to an academic one, which Courts normally abjure from answering. However, since Leave has been granted, we feel curially compelled to briefly delve into the factual matrix of the dispute.

2 On 20th April, 1999, on the request of the Importer, the Appellant had opened a Letter of Credit for the aforementioned sum of USD 352,250 on Bank of India, Calcutta (Negotiating Bank) in favour of the Plaintiff-Exporter; the American Express Bank Ltd. Calcutta, is Defendant No.4 in the said civil suit bearing CS No.678 of 1999, as the advising Bank of the Appellant. The contract was placed on the Plaintiff/Exporter for a consignment of non-basmati rice to be exported from India to the Importer in Bangladesh by railroad. One of the terms of the Letter of Credit was that one set of non-negotiable shipping documents would be couriered after the consignment was despatched to the opener of the LC, namely, the Appellant before us. This was done on 11th May, 1999 and thereupon the Bill of Exchange drawn by the Exporter was discounted by its banker, namely, Bank of India, which thereupon drew another Bill of Exchange upon the Importer. It is alleged that the Appellant received the documentation on 19th May, 1999, and on that very day pointed out the existence of certain discrepancies therein to the Negotiating Bank. The Appellant's case is that

it received a letter from the Importer on 1st June, 1999, stating that the documents were not acceptable and that the goods were damaged, and there were also shortages therein. In its telex dated 24th June, 1999, the Appellant suppressed the stand of the Importer and stated as follows:-

> "RE YR TLX MSG NO. 2288 DTD 24/6/99 CONCERNING PAYMENT OF YR BILL UNDER OUR L/C NO. 02-133-99. PLS BE INFMD THAT THE DOCTS HV NOT BEEN ACCEPTED BY THE IMPORTER TILL DATE (.) MEANTIME WE HOLD YR DOCTS. AT YR ENTIRE RISK AND DISPOSAL (.)"

3 The Negotiating Bank, viz., Bank of India, thereafter, raised a demand on the Appellant for the said sum of USD 352,250 by its telex dated 12th July, 1999 in response to which the Appellant again, as we see it, evasively and with mala fide intent, mentioned that the Importer was out of station and that they would revert to the subject upon his arrival. On 18th July, 1999, the Appellant addressed a telex to Bank of India informing it that the consignment was located at Darshana Land Custom and that the Importer and Exporter were in dialogue with each other. Eventually, by its telex dated 26th August, 1999, the Appellant informed Bank of India that the documents had not been accepted by the Importer. The Appellant has admitted in its Written Statement that the documentation was received by it on 19th May, 1999 and returned to the Bank of India as late as 10th October,

1999. It has also been admitted by the Appellant that in the interregnum, without prior information to the Negotiating Bank or to the Exporter, it had certified photocopies of the shipping documents to its constituent, i.e., the Importer, ostensibly for customs purposes. These documents have not been returned to the Appellant and, obviously on their strength, the Importer has managed to clear the entire consignment from the Darshana Railway Authority. The say of the Appellant is that this was achieved through the C&F Agent of the Importer by producing a forged NOC and endorsement on the reverse of the photocopies of the shipping documents, certified by the Appellant. Any reasonably diligent Banker would be alive to the possibility of the misuse of documents certified by it, even if we are to assume that it was not privy to the fraud. We have earlier noted and we emphasise that the Appellant had evaded mentioning that without the permission of or information to either the Exporter or the Bank of India, it had provided its certification to photocopies of the documentation which, in the event (and as any prudent Banker would anticipate), were misused by the Importer to have the rice consignment released to him. In trans-border or international transactions, trade depends almost entirely on the faith reposed in banking institutions to secure the price of the exported goods, commodities etc. The Exporter can legally and reliably expect that the Bankers will watch its

interests by ensuring that the exported consignment shall be released to the buyer only on the transmission of the price of the shipment as secured through the Letter of Credit. Heavy and fiduciary responsibility, therefore, rests on the Opening Bank which furnishes the Letter of Credit to ensure that payment is secured unless the documentation is defective and/or the invocation of the Letter of Credit is discrepant. In every legal system spanning our globe, jural opinion is unanimous to the effect that the Opening Bank cannot disregard, delay or dilute its responsibility to make payment strictly and promptly as obligated by the terms of the Letter of Credit. This Bank owes a duty to all concerned to ensure that any action taken by it would not enable or conduce the frustration of the obligations contained in a Letter of Credit, as recognised by International Banking norms or extant Uniform Customs and Practice for Documentary Credits (UCP) 500. As we see it, therefore, keeping in perspective that the Importer's Bank i.e., Appellant before us, should not have certified the documentation, reasonably anticipating or being aware of the possibility that this certification could be abused. Law assures the Exporter and its Bank to repose in the expectation, nay, certainty, that the consignment, which is the subject-matter of the Letter of Credit, is not usurped by the Importer/Consignee or its agents, without remitting payment to the consignor's Bank. This is a strict liability cast on

the bank which opens the Letter of Credit, since otherwise International trade and commerce will virtually and indubitably come to a standstill.

4 It is only when irretrievable injury is bound to result and it is plainly evident that there is egregious fraud strictly ascribable to the beneficiary of the LC, that a reason to insulate a party before it against liability and that too, comes about only through the prompt intervention and interdiction of a Court of law. This Court has consistently adhered to this position of law even through the passage of several decades. The LC has the effect of creating a bargain between the banker and the vendor of goods, a deemed nexus between the Seller and the Issuing Bank, rendering the latter liable to the Seller to pay the purchase price or to accept a Bill of Exchange upon tender of the documents envisaged and stipulated in the LC (See Tarapore and Co. vs. V.O. Tractors Export, AIR 1970 SC 891 where Halsbury's Law of England have been relied upon). These observations have been repeated in United Commercial Bank vs. Bank of India [1981 (2) SCC 766], U.P. Coop. Federation Ltd. vs. Singh Consultants & Engineers (P)Ltd. [1988 (1) SCC 174], Federal Bank Ltd. vs. V.M. Jog Engineering Ltd. [2001 (1) SCC 663, Himadri Chemicals Industries Ltd. vs. Coal Tar Refining Co. [2007 (8) SCC 110]. The Opening Bank must only look to assure itself that the invocation is in terms of the LC, and the completion of this exercise has

consistently been circumscribed to a short period, which in the case in hand is one week as per Article 13 B of UCP 500.

5 It is quite evident to us that it is this reasoning which has persuaded the Division Bench of the Calcutta High Court in the impugned Order to comprehensively consider and construe the stand taken by the Appellant in the Dhaka Suit as constituting a clear admission of the Appellant Bank's liability. We must immediately clarify that the Dhaka Suit had been filed by the Importer praying for an injunction against the Appellant as well as the Bank of America Ltd. restraining them from releasing any payment relating to the subject consignment of rice exported to him in Bangladesh by the Exporter from Calcutta. There was no impediment or embargo on the Appellant stating in the pleadings in the Dhaka Suit those facts which it now seeks to proffer, viz. that it had no liability whatsoever and that it did not take any action which enabled or conduced the release of the consignment without first securing and remitting payment in terms of the LC opened by it. Indeed, a holistic perusal of the Written Statement filed by the Appellant in the Dhaka litigation discloses that it had correctly spelt out the factual matrix, and the position it had adopted therein was in consonance with law pertaining to legal obligations of the Opening Bank with regard to the Letter of Credit furnished by it. It is also noteworthy that the Written Statement

was filed in the Dhaka litigation after the Appellant had complete knowledge of the subject suit filed against the Appellant/Exporter in the Calcutta High Court, which suit is the springboard of the present Appeal. It also needs clarification that in the Dhaka Suit Defendants 1 and 2 correspond to the Appellant, Defendant No. 3 therein is American Express Bank Ltd., i.e., Respondent No.3 herein, Defendant No. 4, i.e., Bank of India, is Respondent No.2 herein, and Defendant No. 5 is Respondent No.1 in this Appeal, i.e., the Plaintiff in the Calcutta Suit. The following paragraphs from the said Written Statement if the Appellant in the Dhaka Suit are worthy of reproduction:

> "**13**. That the statements made in paragraph No. 7 of the plaint are matters of record and the matter of strict proof, the onus of which lies on the Plaintiff. Moreover, it is stated that the request of the Plaintiff, the Defendant No. 2 certified the photocopy of Non-negotiable copies of the shipping documents and handed over the same alongwith customs purpose copy of LCAF without NOC to the Plaintiff for customs assessment purpose. But the Plaintiff never returned the said documents to the Defendant No. 2 Bank. But the Plaintiff cleared the entire consignment from the Daranana railway Authority through its C & F Agent M/s Anwar Hossian by producing forged NOC and endorsement on the back side of the photocopy of the shipping documents.

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17. That the statements made in paragraph No. 11 of the plaint are matters of record and as such the Defendant Nos. 1 and 2 do not offer any comments with regard to them. However, it is mentioned here that the Defendant No. 2 received the discrepant shipping documents on 19.05.99 and communicated with the negotiating bank i.e. Defendant No. 4 as well as the Defendant No. 5 Importer for rectification of the discrepancies. But on 10.10.99 the Defendant No. 5 returned the entire sets of shipping documents to the negotiating bank i.e. Defendant No. 4 and mentioned here that the importer i.e. Plaintiff had taken delivery of the imported goods against the said shipping documents of letter of Credit No. 02-133-99 from Railway Station, Darshana during the period from 16.05.99 to 01.06.99 through its C & F Agent M/s Anwar Hossian by forged documents. So question of discrepancy in the documents is immaterial and irrelevant and as such the application filed by the Plaintiff/petitioner for temporary injunction is liable to be dismissed.

18. That the statements made in paragraph No. 12, 13 and 14 of the application are false fabricated, mala fide, concocted and hence denied by Defendant Nos.1 and 2 it is stated that Defendant No.2 returned the shipping documents to the beneficiary's bank i.e. the Defendant No. 4 due to discrepancy therein and requested to stop payment against the said shipping documents of the L/C No. 02-133-99. The Defendant No. 4 communicated the same to the Defendant No. 5. But the

Defendant No. 5 i.e. supplier returned the entire shipping documents and alleged that the Plaintiff has already taken delivery of the goods against the said shipping documents of the L/C No. 02-133-99. It may be mentioned here that the Defendant No.5 i.e. the supplier a suit as Plaintiff in this matter in Calcutta High Court being suit Nos. C.S. 678 of 1999 against (1) Bank of India (2) American Express Bank Calcutta (3) National Bank Limited, Khatungonj all are Defendant Nos. 4,3,2 respectively in this suit and (4) M/s Saru Meah & Sons Plaintiff in this suit. The supplier i.e. Defendant No.5 in this case obtained temporary injuries from Calcutta High Court in suit No. C.S. 678 of 1999 restraining American Express Bank Limited, Calcutta i.e. Defendant Nos. 3 in this suit from disturbing sums without leaving a sum of Rs.1.54 crore equivalent to more or less US$ 3,52,250.00 in Nostro A/D No.412800566 maintained with them by the National Bank Limited. The Defendant No.1 of suit No. C.S. No.678 of 1999 i.e. Defendant No. 4 in this onus requested the National Bank Limited, to make immediate payment to the Plaintiff of Suit No.678 of 1999 i.e. Defendant No.5 in this suit i.e. supplier through its corresponding bank American Express Bank i.e. Defendant No.3. The Defendant No.1 of the suit No. C.S. No.678 of 1999 made such request to the Defendant No.1 of this suit on the ground that the goods against the shipping documents had already been delivered and consumed by the Defendant No.4 i.e. Plaintiff in this suit. Now the Defendant Nos. 1 and 2 are under deligation to reimburse the payments to

> the supplier's corresponding bank i.e. Defendant No.3. So the application filed by the Plaintiff for temporary injunction is liable to be dismissed."

A perusal of paragraph 18 of the Written Statement filed by the Appellant in the Dhaka litigation discloses that its position was that it was "under obligation to reimburse the payments to the supplier's corresponding bank i.e., Defendant No.3" (Bank of America Ltd. therein). This admission of fact is clear, and in consonance with the law pertaining to legal obligations concerning Letters of Credit, obliges it to remit payments contemplated therein. Assuming that the Appellant did not take any *mala fide* action so as to enable the Importer to have the consignment released without authority, it was in clear violation of its fiduciary responsibility as the Opener of a Letter of Credit. Therefore, insofar as the factual matrix is concerned, the Appellant had correctly made the statement pertaining to its liability in the Dhaka Suit, which can legitimately be taken as an admission in the Calcutta Suit.

6 The interim Order, it may be recalled, did not restrain or interdict the operation of the impugned Judgment and has in actuality, rendered the Appeal infructuous, since the LC amounts have left the Appellant's coffers. In view of the admission of fact made by the Appellant, we think the Court

was correct in concluding in the impugned Judgment that a money decree for the sum secured by the subject Letter of Credit (for USD 352,250) should be passed. The Appeal is without merit and is dismissed with costs.

.....J.
[VIKRAMAJIT SEN]

.....J.
[ARUN MISHRA]

New Delhi;
January 14, 2015.