

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment delivered on: December 26, 2014*

+ **FAO (OS) 549/2014 & CM No.21384/2014**

CREDIT AGRICOLE, CIB Appellant
Through: Mr.Abhinav Vashist, Sr. Adv. with
Mr.Sandeep Mahapatra, Mr.Dhruv
Malik and Mr.Ashish Mukhi, Advs.

versus

JVL AGRO INDUSTRIES LTD. & ORS Respondents
Through: Mr.Sandeep Sethi, Sr. Adv. and
Mr.Gopal Jain, Sr. Adv. with
Mr.Saurav Agarwal and Mr.Akhil
Sachar, for R-1.
Mr.Shekhar Vyas, Adv. with Mr.Arun
Pathak, Adv. for R-3.

CORAM:
HON'BLE DR. JUSTICE S. MURALIDHAR
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (Oral)

1. The present appeal has been filed under Section 104 read with Order XLIII Rule 1(r) and section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC) impugning the order dated 19th December, 2014 passed by the learned Single Judge of this Court in CS(OS) No.3947/2014, *inter alia*, passing an order for status quo and thereby restraining the Bank of Baroda, respondent No.2 herein, from making payments to Credit Agricole, CIB, appellant herein, on the due date as provided for in the Letter of Credit bearing No.2630IMPLC0005614 for a sum of USD 432,500/- (U.S. Dollar Four Hundred Thirty Two Thousand

and Five Hundred Only) issued by the respondent No.2 on 27th June, 2014, wherein the appellant was the beneficiary bank.

2. Admittedly, the respondent No.1 herein, who is plaintiff in the suit proceedings, filed the suit for permanent injunction seeking the following prayers:

“A. Pass a decree of permanent injunction restraining Defendant No.2, from making any payment under the Letter of Credit No.1868FLC01029/14 dated 30.06.2014 to M/s Wells Fargo Bank, N.A, Defendant No.5, being the beneficiary under the Letter of Credit for Defendant No.3 or to any one else by debiting the account of the Plaintiff and/or taking any other coercive or precipitative action in relation thereto;

B. Pass a decree of permanent injunction restraining Defendant No.1, from making any payment under the Letter of Credit No.2630IMPLC0005614 dated 27.06.2014 to the Defendant No.4 being the beneficiary under the Letter of Credit for Defendant No.3, or to any one else by debiting the account of the Plaintiff and/or taking any other coercive or precipitative action in relation thereto;”

3. The following impugned order dated 19th December, 2014 was passed:

“1. Matter taken up today at the end of the Board at about 11.45 A.M.

2. None has appeared on behalf of the defendant No.5.

3. On the plaintiff taking steps within a week, summons in the suit and notice in the captioned IA be issued to the defendant No.5, by all permissible modes including e-mail, returnable on 4th February, 2015.

4. Written statement/reply be filed by the defendant No.5 within two weeks from the date of service of the process. Replication/rejoinder, if any, be filed by the plaintiff before the next date of hearing.

5. Learned counsel for the defendants No.1 to 4 state that they have not got the complete set of documents. Learned Senior Counsel for the plaintiff states that he will supply all the papers during the course of the day.

6. Written statement/reply be filed by the defendants No.1 to 4 within three weeks. Replication/rejoinder, if any, be filed by the plaintiff before the next date of hearing.

7. Mr.Sanjeev Sindhwani, learned Senior Counsel representing the defendant No.3 on instructions from Mr.Shekhar, learned counsel for the defendant No.3 states that the entire money of the two LCs has already been credited to the account of the defendant no.3. Learned Senior Counsel for the plaintiff disputes it.

8. Mr.Sandeep Mahapatra, Advocate representing the defendant No.4 states that as per swift message received from Bank of Baroda – defendant No.2, the money that has been paid to the defendant No.3 is to be paid to the defendant No.4 today. Learned Senior Counsel for the plaintiff disputes it.

9. There is dispute among the parties as to the discounting of two LCs in question. Till the next date of hearing, the parties can be directed to maintain the status quo regarding the two LCs in question. To this, learned counsel for defendant No.4 has serious opposition. He states that if status quo order is passed, the defendant No.4 would not be able to receive the money.

10. Considering all the facts and circumstances of the case, in the meantime, all the parties are directed to maintain status quo as it exists today regarding the two LCs in question till the next date of hearing.

11. List on 4th February, 2015.”

4. As per pleadings, the respondent No.1 herein is a company registered under the Companies Act, 1956 having one of its offices at 79 Shyamlal Road, 4th Floor, Darya Ganj, New Delhi and is engaged in the business of manufacturing and sale of edible refined oil. It is stated that for manufacture of such edible refined oil, crude palm oil is the main raw material. It is for

procurement of crude palm oil that respondent No.1 entered into an agreement dated 22nd May, 2014 with respondent No.3.

5. The respondent No.3 is a Singapore based company and is a producer of crude palm oil having its facilities at Indonesia. The sole Indian office of respondent No.2 is at KJ and Associates, 211-A, 2nd Floor, Trivevi Complex, E-10-12, Jawahar Park, Laxmi Nagar, Delhi.

6. The respondent No.2 is Bank of Baroda, a body corporate incorporated constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1970 and having its head office at Baroda House, Mandvi, Vadodara. The respondent No.1 in furtherance of the Sales Contract with respondent No.3 opened an irrevocable Letter of Credit with its International Business Branch having its offices at Varuna Bridge, Nadesar, Cantt., Varanasi. The Letter of Credit bearing No.2630IMPLC0005614 for a sum of USD 4,325,000/- was issued on 27th June, 2014 with the appellant being the beneficiary Bank therein.

7. The respondent No.4 is Punjab National Bank having its registered office at registered office at 7, Bhikaji Cama Place, New Delhi. The respondent No.1 in furtherance of the Sales Contract with respondent No.3 opened another irrevocable letter of credit with its Branch having its offices at Mehmoorganj, Varasani. The Letter of Credit bearing No.1868FLC01029/14 for a sum of USD 2,854,500/- was issued on 30th June, 2014 with the respondent No.5, M/s. Wells Fargo Bank, N.A., Hong Kong Branch having offices at AIA Central, 1 Connaught Road, Central Hong Kong being appointed as the beneficiary Bank therein.

8. The respondent No.1 entered into a Sales Contract with respondent No.3 bearing no.GAIPL/S/0614/CPC0428040 on 22nd May, 2014 for the

procurement of 8,300 MT of crude Palm Oil. The payment for the same was to be made through an irrevocable and confirmed letter of credit as provided for in Clause 1 of the Sales Contract. The cargo was to be loaded at any port in either Indonesia or Malaysia and the same was to be discharged at the Indian port of Haldia in West Bengal. Thereafter on 22nd June, 2014 after the ship was loaded with the entire cargo the respondent No.3 issued two commercial invoices in favour of the respondent No.1 for the sum of USD 4,325,000/- on 22nd June, 2014 and USD 2,854,500/- respectively. Alongwith the above the respondent No.3 on 22nd June, 2014 itself issued 10 bills of lading of which six were for a combined weight of 5000 MT valued at USD 4,325,000/- and the other four for a weight 3300 MT valued at USD 2,854,500/-.

9. The dispute between the respondent No.1 and respondent No.3 is purely a contractual which is governed by an Arbitration Agreement.

10. Learned counsel for the appellant has referred the Sales Contract No.AIPL/S/0614/CP042840 dated 22nd May, 2014 wherein the general terms and conditions are given. One of the conditions mentioned in the said contract is 1.1. Letter of Credit. The relevant clause 1.1.1. reads as under:

“1.1.1 Payment shall be by IRREVOCABLE AND CONFIRMED LETTER OF CREDIT (“LC”) AT SIGHT for 100% of the Unit Price, to be issued by a First Class State Bank and branch that is acceptable to the Seller, to the Seller’s nominated bank 10 DAYS BEFORE NOMINATED VESSEL’S ARRIVAL at the load port in favour of the Seller LC is to allow for TT reimbursement at the Buyer’s costs.”

11. Relevant dates are mentioned in the list of date. In order to understand the sequence of events, the same are reproduced as under:

22 nd May, 2014	Sales Contract	No.
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	<p>GA IPL/S/0614/CPO42840 entered into between JVL Agro Industries Limited (respondent No.1) and M/s Golden Agri International Pte. Limited (respondent No.3) for purchase of 8000 MT of crude Palm Oil.</p>
22 nd June, 2014	<p>Loading of vessel complete at an Indonesian Port and the ship started its voyage towards Port of Discharge.</p> <p>Issuance of Bill of Ladings for aggregate supply of 83.99.865 MT of crude Palm Oil.</p> <p>Issuance of certificate of seaworthiness by Jalvahan Ship Trading Pte. Ltd.</p> <p>Issuance of commercial invoices (two) by the Respondent No.3.</p>
27 th June, 2014	<p>Respondent No.1 opened the Letter of Credit bearing no.2630IMPLC0005614 with Bank of Baroda's (Respondent No.2) International Buiness Branch, Varanasi for value of 6 Bill of ladings worth 5000 MT amounting to USD 432,500/- wherein Credit Agri Cole CIB (appellant) was the beneficiary Bank. The Letter of Credit was valid for a period of 180 days.</p>
14 th July, 2014	<p>The requisite documents for the payments to be made was deposited with the Respondent</p>

	No.2 by the Appellant.
29 th July, 2014 Onwards	Dispute between Respondent No.1 and Respondent No.3 in relation to the discharge of crude Palm Oil at the Indian discharge Port at Haldia.
21 st August, 2014	SWIFT from CACIB Singapore to BOB Varanasi stating that the documents have been received by BOB but no response has been received within 5 working days, hence BOB is precluded from raising any un-notified discrepancies.
6 th November, 2014	Email sent by Respondent No.1 to the Appellant stating that no payment will be made by it on the due date as per the letter of credit until the crude Palm Oil is delivered to it.
15 th November, 2014	Letter of Respondent No.2 to Respondent No.1 stating that it was obligated to make the payments to the Appellant on the due date and the Respondent No.1 should make funds available for the same.
26 th November, 2014	SWIFT from BOB to CA-CIB Singapore wherein they have authorized BOB New York to reimburse CACIB Singapore on due date i.e. 19 th December, 2014. Based on the same Credit Agricole Singapore has already lodged

	the claim with BOB NY
18 th December, 2014	Suit for permanent injunction filed by the Respondent No.1 in the High Court of Delhi restraining the Respondent No.2 from making payment to the Appellant under the Letter of Credit dated 27 th June, 2014.
19 th December, 2014	Due date for payment of dues to the Appellant by the Respondent No.2 under the Letter of Credit dated 27 th June, 2014. Passing of the impugned order by the learned Single Judge in the suit of permanent injunction filed by the Respondent No.1.

12. The appellant being the beneficiary bank to the BOB LC had confirmed, negotiated and discounted the said letter of credit by paying the respondent No.3 on 14th July, 2014 upon presentation of compliant documents by respondent No.3 in accordance to the terms of the LC issued by BOB. According to the terms of the LC, which is 180 days after Bill of Lading date, the payment due date of this LC is 19th December, 2014. The appellant by way of a Swift Message dated 21st August, 2014 called upon the respondent No.2 to make the payments in lieu of the LC as no discrepancies was pointed out by it within the specified time frame. The respondent No.2 categorically admitted that all documents were received and that due payments were required to be made.

The BOB LC is a separate and binding agreement, independent of the Sales Contract executed between respondent No.1 and respondent No.3, the

operation of the same alongwith the performances of the rights and obligation therein cannot be stopped due to any dispute that may have arisen during the course of performing the Sales Contract. In the present case the BOB LC is an agreement between respondent No.2 and the appellant and both parties are required to carry out their obligations referred to in the Sales Contract.

13. The respondent No.1 has contended before the learned Single Judge that the ship engaged by the respondent No.3 was not seaworthy and due to a major breakdown of the ship's main engine it reached the port of discharge 27 days late, it was also contended that the discharge of the cargo has not been possible due to the ongoing problems with the ship and its inability to heat the Palm Oil upto a level from which it can be extracted from its storage holds. In light of the same the respondent No.1 had sent an email to the appellant on 6th November, 2014 stating that as the crude Palm Oil has not been delivered to the respondent No.1 therefore no payment will be made by it to the appellant until the crude Palm Oil is delivered to it.

Legal Position on the Grant of Injunction Against Letter of Credit

14. Before dealing with the rival submissions of the parties, we feel appropriate to discuss the settled proposition of law with the respect to judicial interference against the invocation of the letter of credit. The scope of judicial interference is very limited and the same has been emphasized by the Apex Court in catena of cases.

15. One of the celebrated cases was the Judgment of Calcutta High Court titled as *United Commercial Bank v. Hanuman Synthetics Ltd. & Ors.*, AIR 1985 Cal 96 wherein the principles of autonomous nature of Letter of

credit independent from the underlying contract has been laid down in **para 44 and 45:**

“44. The law is well-established that the bank which has opened a letter of credit is not concerned with the relationship between the seller and the customer; nor with the question whether the seller had performed its contracted obligation or not. The bank is also not concerned with the question whether the seller is in default in any way or not. The machinery and the commitment of the bank are on a different level. It has been emphasized by the English Courts and also by the Supreme Court that the bank must be allowed to honour its commitments under a letter of credit free from interference by the Courts; otherwise, trust in international commerce will be irreparably damaged. The dispute as to the sufficiency of the performance between the buyer and the seller or between the seller and the buyer cannot be the reason for withholding the payment under a letter of credit. The bank is only required to see whether the event has happened on which its obligation to pay has arisen.

45. In this case, the Central Bank was required to pay in terms of the letter of credit against certain documents. The documents have been duly tendered and accepted by the Central Bank and the event has happened on which the Central Bank is now obliged to pay in terms of the letter of credit. Whether the goods that have been delivered are of merchantable quality or not or whether the goods are up to the contract or not or whether they are of the specified quality or quantity cannot be gone into by the bank. Similarly, the question whether the goods correspond with the description is also a question that must be resolved by the buyer and the seller in an appropriate proceeding. But the Central Bank which has opened a confirmed and irrevocable letter of credit cannot refuse to pay even when all the terms of the letter of credit have been fulfilled to its satisfaction on the plea that the goods are not up to the contract or do not correspond with the description. The bank is not entitled to withhold payment after its obligation to pay has arisen merely because an allegation of fraud has been made against the seller. As Browne L. J.

emphasized in the case of *Edward Owen* that it was not enough to allege fraud. If that was possible in law, all that a buyer had to do to stop payment under an irrevocable letter of credit was to allege fraud against the seller. It is very easy to allege fraud whenever there is a dispute as to quantity or quality of the goods. But that cannot be the ground on which the bank will be entitled to refuse payment. As Lord Denning has emphasized that the rule, in the case of a confirmed irrevocable credit in respect of contract for the sale of goods, is that the confirming bank is in no way concerned with disputes between the buyer and the seller as to the contract of sale which underlies the credit and it is a strict rule. In order to come within the exception, the buyer must not only allege but clearly establish that the documents that were presented by the beneficiary were forged or fraudulent.”

16. The Apex Court had an occasion to deal with the similar proposition in the case of *UP Cooperative Federation Ltd. v. Singh Consultants and Engineers (P) Ltd.*, (1988) 1 SCC 174, wherein the court re-emphasized the principle that the letter of credit must not be interfered with by the courts as the restraint on encashment of the same has major implications upon the international commerce as well as it hinders the autonomous nature of the transaction. The court has held that the Bank is required to just look into the correctness and appropriateness of the documents and if the same are found to be in order, the other consideration of the main underlying contract does not affect the encashment of the letter of the credit. The relevant paras of the Judgment are noteworthy:

“44. The modern documentary credit had its origin from letters of credit. We may, therefore, begin the discussion with the traditional letter of credit. Paul R. Verkuil in an article [Bank Solvency and Guaranty Letters of Credit, *Standford Law Review* V. 25 (1972-73 at p. 719)] explains the salient features of a letter of credit in these terms:

The letter of credit is a contract. The issuing party- usually a bank-promises to pay the 'beneficiary'-traditionally a seller of goods-on demand if the beneficiary presents whatever documents may be required by the letter. They are normally the only two parties involved in the contract. The bank which issues a letter of credit acts as a principal, not as agent for its customer, and engages its own credit. The letter of credit thus 'evidences-irrevocable obligation to honour the draft presented by the beneficiary upon compliance with the terms of the credit.

45. The letter of credit has been developed over hundreds of years of international trade. It was most commonly used in conjunction with the sale of goods between geographically distant parties. It was intended to facilitate the transfer of goods between distant and unfamiliar buyer and seller. It was found difficult for the seller to rely upon the credit of an unknown customer. It was also found difficult for a buyer to pay for goods prior to their delivery. The bank's letter of credit came into existence to bridge this gap. In such transactions, the seller (beneficiary) receives payment from issuing bank when he presents a demand as per terms of the documents. The bank must pay if the documents are in order and the terms of credit are satisfied. The bank, however, was not allowed to determine whether the seller had actually shipped the goods or whether the goods conformed to the requirements of the contract. Any dispute between the buyer and the seller must be settled between themselves. The Courts, however, carved out an exception to this rule of absolute independence. The Courts held that if there has been "fraud in the transaction" the bank could dishonour beneficiary's demand for payment. The Courts have generally permitted dishonour only on the fraud of the beneficiary, not the fraud of somebody else.

17. Thus, it is not *res integra* that the letter of credit is an independent contract and the courts are in trend of not to interfere with the encashment of

the letter of credit unless the case falls within the purview of exceptions laid down by the Apex Court.

18. The legal proposition on the fraud has been laid down in the same case of *UP Cooperative Federation Ltd* (Supra) which has been elaborated by his Lordship Jagannath Shetty (as his Lordship then was) by stating the following:

“The wholly exceptional case where an injunction may be granted is where it is proved that the bank knows that any demand for payment already made or which may thereafter be made will clearly be fraudulent. But the evidence must be clear, both as to the fact of fraud and as to the bank's knowledge. It would certainly not normally be sufficient that this rests on the uncorroborated statement of the customer, for irreparable damage can be done to a bank's credit in the relatively brief time which must elapse between the granting of such an injunction and an application by the bank to have it discharged.”

19. The said legal proposition has been reiterated by the Supreme Court in the case of *State Trading Corporation v. Jainsons Clothing Corporation*, (1994) 6 SCC 597, the relevant paragraphs of the judgment are worth mentioning:

“8. The grant of injunction is a discretionary power in equity jurisdiction. The contract of guarantee is a trilateral contract which the bank has undertaken to unconditionally and unequivocally abide by the terms of the contract. It is an act of trust with full faith to facilitate free flow of trade and commerce in internal or international trade or business. It creates an irrevocable obligation to perform the contract in terms thereof. On the occurrence of the events mentioned therein the bank guarantee becomes enforceable. The subsequent disputes in the performance of the contract does not give rise to a cause nor is the court justified on that basis,

to issue an injunction from enforcing the contract, i.e. bank guarantee. The parties are not left with no remedy. In the event of the dispute in the main contract ends in the party's favour, he/it is entitled to damages or other consequential reliefs.

9. It is settled law that the Court, before issuing the injunction under Order 39, Rules 1 and 2, CPC should prime face be satisfied that there is triable issue strong prima facie case of fraud or irretrievable injury and balance of convenience is in favour of issuing injunction to prevent irretrievable injury. The court should normally insist upon enforcement of the bank guarantee and the court should not interfere with the enforcement of the contract of guarantee unless there is a specific plea of fraud or special equities in favour of the plaintiff. He must necessarily plead and produce all the necessary evidence in proof of the fraud in execution of the contract of the guarantee, but not the contract either of the original contract or any of the subsequent events that may happen as a ground for fraud.”

20. The Apex Court in the above decision of State Trading Corporation (Supra) has extended the exception from fraud to Special Equities. The law again was brought forward by yet another decision of *Svenska Handelsbanken v. M/s. Indian Charge Chrome and Ors.*, AIR 1994 SC 626, wherein an important point was discussed about the inter relation of fraud and irretrievable injury in the following words:

“We have already held that the contracts between the lenders and the borrower are not vitiated by any fraud much less established fraud and there is no question of irretrievable injury, therefore, there was no reason for the High Court to set aside the order of the trial court.

Against there is no case of any irretrievable injury either of the type as held in the case of Itek Corporation (supra) as there is no difficulty in the judgment of this country being executable in the courts in Sweden.

The High Court was not right in working on mere suspicion of fraud or merely going by the allegations in the plaint without prima facie case of fraud being spelt out from the material on record.

The High Court was also in error in considering the question of balance of convenience. In law relating to bank guarantees, a party seeking injunction from encashing of bank guarantee by the suppliers has to show prima facie case of established fraud and an irretrievable injury. Irretrievable injury is of the nature as noticed in the case of Itek Corporation (supra). Here there is no such problem. Once the plaintiff is able to establish fraud against the suppliers or suppliers-cum-lenders and obtains any decree for damages or diminution in price, there is no problem for affecting recoveries in a friendly country where the bankers and the suppliers are located. Nothing has been pointed out to show that the decree passed by the Indian courts could not be executable in Sweden.

The High Court totally ignored the irretrievable injury which will be caused to defendant No. 12 in not honouring the bank guarantee in international market which may cause grievous and irretrievable damage to the interest of the country as opposed to the loss of money to the borrower/plaintiff. There was no question of defendant No. 4 not making any demand. The instalments for repayment of the loans had already been fixed and liable to be paid without demand by defendant No.4. Defendant No. 12 is under a duty to pay the instalments regularly on a fixed date without any demand to defendant No. 4.”

21. On Similar lines, the following authorities are also noteworthy:

- (i) ***Centax (India) Ltd. v. Vinmar Impex Inc. & Ors.*** 1986 (4) SCC 136
- (ii) ***The Projects & Equipment Corporation of India Ltd. v. Onoda Engineering & Consulting Company Ltd.*** 43 (1991) DLT 42
- (iii) ***Coronation Marketing Services Ltd. v. MMTC Limited & Anr.*** 61 (1996) DLT 61

- (iv) *Dwarikesh Sugar Industries Ltd. v. Prem Heavy Engineering Works (P) Ltd. & Anr.* 1997 (6) SCC 450
- (v) *Mahatma Gandhi Sahakra Sakkare Karkhane v. National Heavy Engg. Coop. Ltd. & Anr.* 2007 (6) SCC 470
- (vi) *Mountain Mist Agro India (Pvt.) Ltd. & Anr. V. Mr. S. Subramaniam* IA 8979/2006 in CS(OS) 1643/2005
- (vii) *Fair Deal Agencies & Anr. V. Inner Mongolia Muwang Animal By Product Company Ltd. & Ors.* 150 (2008) DLT 623
- (viii) *P.V. Beverages Pvt. Ltd. v. Global Beverages AG & Ors.* 148 (2008) DLT 68

22. The impugned order also does not take into account the international practices and customs relating to documentary credit i.e. the Uniform Commercial Practice of Documentary Credit (1983) issued by the International Chamber of Commerce. The details of the fraud are not given in the impugned order.

Applicability of UCP 600

23. The UCP 600 in Article 5 states that “Banks deal with documents and not with goods, services or performance to which the documents may relate”, therefore the Banks as parties to a letter of credit are not required to concern themselves with the actual performance of the services that were to be rendered and if the requisite documents are in order then the said Banks are required to perform their obligations under the letter of credit. In the instant case as can be seen from the respondent No.2’s reply to respondent No.1 dated 15th November, 2014, the requisite documents were submitted to it by the appellant as early as 14th July, 2014 and therefore the respondent No.2 was obliged to make the payment to appellant on the payment due date of 19th December, 2014.

24. The learned counsel for the appellant states that UCP 600 is applicable and is expressly agreed by the parties in tri partite agreement.

25. We find merit in the submission of the appellant that the letter of credit is guided by UCP 600 rules. Article 4 of the said rules postulates that the bank is not concerned about terms of the underlying contract which are not forming part of letter of credit. The said Bank is also relieved from any responsibility about the disputes arising out of the main contract between the seller and the buyer. Essentially, the said rule is the rule of privity of contract enshrined in the Contract Act wherein the party who is not privity of the contract does not accept any responsibility in the contract between the third parties. It is also correct to state that the respondent No.1 or his representative had never asked for the incorporation of the terms of the underlying contract into the letter of credit at the time of entering into the letter of credit.

26. The Courts have given primacy to the UCP norms over the underlying agreement as the letter of the credit is governed by UCP norms. In the case of ***United Commercial Bank v. Bank of India and Ors.***, AIR 1981 SC 1426, the court also emphasized about the presence or absence of the provisions in the letter of credit which governs the bank's responsibility by stating as under :

“The rule is well established that a bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credits of a bank”

27. The Supreme Court again came up with the similar question in ***Federal Bank Ltd v. V.M. Jog Engineering Ltd and Others***, (2001) 1 SCC 663, wherein the court again said that the contract of the Bank guarantee or

the Letter of Credit is independent of the main contract between the seller and the buyer. This is also clear from Article 3 of the UCP (1983 Revision).

28. Mr.Vashist, learned senior counsel appearing on behalf of the appellant, has made his submissions before us that the impugned order passed by the learned Single Judge is against the settled proposition of law which has been laid down by a catena of judgments of the Apex Court relating to the question of injunction. He also contends that the respondent No.1 has received the goods which were in conformity with the agreement entered into between the respondent No. 1 and respondent No.3. He says that in case the goods have not been received or the same were not in conformity with the agreement, the respondent No.1 has a remedy to take the appropriate action against the respondent No.3 as per the agreement. He further states that the money has already gone from the pocket of his client. The respondent No.1 is at liberty to sue respondent No.3 on the issue of fraud if any committed by the respondent No.3. The appellant has not committed any fraud. We find force in the submissions of the learned counsel for the appellant. Therefore, the interim order passed by the learned Single Judge is contrary to the settled law.

29. Mr.Sethi, learned senior counsel appearing on behalf of the respondent No.1, states that his client has not received the goods and the fraud has been committed against respondent No.1. He further submits that since the appellant has failed to honour the condition that as per the Letter of Credit, therefore, the learned Single Judge has rightly passed the status quo order in the matter. He referred the decision of the Supreme Court in the case of ***State Bank of India and Ors. vs. Manganese Ore (India) Ltd. and Anr.***, (1996) 11 SCC 113.

30. We have gone through the decision referred by Mr.Sethi, learned senior counsel for the respondent No.1. The above said judgment referred by Mr.Sethi does not help the case the respondent No.1 on the two reasons; firstly that the provisions of UCP 600 have not been discussed and secondly after passing the said judgment, catena of judgments has been rendered by the Supreme Court discussing the similar issue. It is also pertinent to mention that the provisions of UCP 600 have not been discussed which are applicable *inter se* banks. Thus, the said judgment is distinguishable on this reason. It is also pertinent to mention that no reasons have been assigned in the impugned order which is mandatory under the proviso of Rule 3 of Order XXXIX CPC.

31. Having considered the entire gamut of the matter, we are of view that the impugned order is not sustainable in law on merit. Even otherwise, the same is liable to be set aside in view of the absence of the reasons. Accordingly, the appeal is allowed. The impugned order with regard to direction to the parties to maintain status quo regarding the two LCs in question till the next date of hearing is set aside.

32. Copy of the order be given dasti under the signatures of the Court Master.

(S. MURALIDHAR)
JUDGE

(MANMOHAN SINGH)
JUDGE

DECEMBER 26, 2014