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UNITED COMMERCIAL BANK

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v.

BANK OF INDIA AND OTHERS

March 26, 1981

[A.C. GUPTA AND A.P. SEN, JJ.]

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Banking law—Documents submitted by the seller of goods not in conformity with instructions given in the letter of credit—Duties of the paying bank—Whether bound to determine by physical examination or on expert advice if the goods conformed to the contract—Nature and effect of letter of credit.

Practice—Payment made by the paying bank "under reserve" as a result of discrepancies in the documents submitted by the seller—High Court, if could grant injunction restraining the paying bank from collecting the amount paid under reserve.

D

Constitution of India—Article 136—Supreme Court, if would interfere with interlocutory orders under Art. 136.

Words and Phrases—Payment "under reserve"—Meaning of.

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Respondent No. 2 entered into a contract to sell to respondent No. 3 one thousand metric tonnes of "Sizola Brand Pure Mustard Oil" valued at approximately Rs. 86 lakhs pursuant to which the buyer opened a letter of credit with the appellant bank. After despatching the goods to the various destinations to which they were instructed to send, the seller presented 20 sets of documents in the first lot and 27 sets of documents in the second, the aggregate value of which was

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equivalent to the amount of letter of credit. The appellant bank refused to make payment "except under reserve" pointing to a discrepancy in the railway receipts which stated "Sizola Brand Pure Mustard Oil Unrefined" as against the description in the instructions of the letter of credit "Sizola Brand Pure Mustard Oil". On instructions from the seller the respondent bank received the money in respect of the first lot of 20 documents "under reserve" and credited the amount

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to their account with a specific notation that the amount was paid "under reserve" as a result of discrepancies between the railway receipts and the instructions in the letter of credit.

In respect of the second lot, the appellant bank refused payment on the ground of the discrepancies in the railway receipts as before as also on the ground that some of the railway receipts were "stale".

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In the meantime the appellant bank asked the respondent to refund the amount paid in respect of the first lot of documents under reserve because the

bills were acceptable to the buyer due to discrepancies. Some correspondence ensued between the parties and the banks; eventually on the faith of an undertaking given by the seller the appellant bank paid the remainder amount in respect of the 27 bills as well "under reserve" so that the value in respect of both the sets of bills paid to the sellers in two instalments was made "under reserve". A

The sellers filed a suit in the High Court. B

A few days thereafter the appellant bank served a letter of demand on the respondent bank for the refund of the entire amount paid to it in respect of the two sets of bills together with interest thereon because, according to it, the bills of exchange had not been retired by the buyer for the reasons that the railway receipts were stale that the goods had not been supplied according to the terms of the agreement and that chemical analysis of the oil showed that it was not fit for human consumption. C

The respondent bank in turn wrote to the seller to refund the whole amount whereupon the seller moved the High Court for the grant of an *ex parte ad interim* injunction restraining the appellant bank from recalling or receiving the amount due from the respondent bank which was granted. D

The High Court appointed a Court receiver with power to sell the goods without any obligation or liability to purchasers as to their quality, quantity or edibility. At the sale the seller himself bought the goods for Rs. 18 lakhs odd. The sale was confirmed by the High Court.

The single Judge of the High Court thereupon made the temporary injunction absolute till the disposal of the suit filed by the sellers on the view that the appellant was not entitled under the terms of the letter of credit to unilaterally impose a condition of the payment "under reserve" or refuse to pay against the documents tendered by the sellers merely because of the alleged discrepancies. E

A Division Bench of the High Court summarily dismissed the appellant's appeal with the result that the seller received the whole of the amount of the letter of credit as well as bought the whole lot of goods for Rs. 18.53 lakhs. F

On the question whether the High Court should, in a transaction between a banker and a banker, grant an injunction at the instance of the beneficiary of an irrevocable letter of credit restraining the issuing bank from recalling the amount paid under reserve from the negotiating bank acting on behalf of the beneficiary against a document of guarantee/indemnity at the instance of the beneficiary and (2) whether this Court could, in a matter like this, depart from its normal practice and refuse to interfere with an interlocutory order under Article 136 of the Constitution. G

Allowing the appeal,

HELD : 1(a) The High Court was wrong in granting the temporary injunction restraining the appellant bank from recalling the amount paid to the respondent bank. Courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of a letter of credit or a H

A bank guarantee between one bank and another. If such temporary injunctions were to be granted in a transaction between a banker and a banker, restraining a bank from recalling the amount due when payment is made under reserve to another bank or in terms of the letter of guarantee or credit executed by it, the whole banking system in the country would fail. [329 F, 324B-C]

(b) In the instant case the appellant bank was under a duty to its constituB ent to scrutinise the documents and could not be compelled to make payment particularly when the description in the document did not tally with that in the letter of credit. It was fully entitled to exercise its judgment for its own protection. Instead of asking the buyers to change the description of the goods in the letter of credit the sellers sought to get over the irregularity by instructing the bankers to execute a letter of guarantee or indemnity. [325 G-H]

C (c) The appellant bank knew little or nothing about the mustard oil. Its duty was not to go out and determine by physical examination of the consignments, or employment of experts, whether the goods actually conformed to the contract between the buyer and the seller, nor even determine either from its own or expert advice whether the documents called for the goods which the buyer would be bound to accept. [326 C-D]

D 2(a) Bank issuing or confirming a letter of credit is not concerned with the underlying contract between the buyer and seller. The duties of a bank under a letter of credit are created by the document itself; 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 credit. [319 B-C]

(b) The opening of a confirmed letter of credit constitutes a bargain between the banker and the seller of the goods which imposes on the banker an absolute E obligation to pay. The banker is not bound or entitled to honour the bills of exchange drawn by the seller unless they and such accompanying documents as may be required thereunder, are in exact compliance with the terms of the credit. Such documents must be scrutinised with meticulous care.' If the seller has complied with the terms of the letter of credit, however, there is an absolute obligation upon the banker to pay irrespective of any disputes between the buyer and the seller whether the goods are upto the contract or not. [317 C-D]

F *Tarapore and Co., Madras* v. *Tractors Export, Moscow and Anr.* [1969] 2 S.C.R. 920 applied.

Hamzeh Malas and Sons v. *British Imex Industries Ltd.* [1958] 2 Q.B. 127 and *Urguhart Lindsay and Co. Ltd.* v. *Eastern Bank Ltd.* [1922] 1 K.B. 318, referred to.

G (c) The refusal of the bank to honour a bill of exchange drawn by the seller on presentation of the proper documents constitutes a repudiation of the contract as a whole and the sellers are entitled to damages arising from such a breach. [317 E]

H (d) A letter of credit constitutes the sole contract with the banker, and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods, for the purchase price of which the letter of credit was issued. [319 G]

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(e) It is settled law that in dealing with commercial letters of credit the documents tendered by the seller must comply with the terms of the letter of credit, and the banker owes a duty to the buyer to ensure that his instructions relative to the documents against which the letter of credit is to be honoured are complied with. [322 D]

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(f) A payment under reserve is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. The sellers have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted. [329 B-C]

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English ,Scottish and Australian Bank Ltd. v. *Bank* of *South Africa* [1922] 12 Ll.L. Rep. 21 st. 24, *Equitable Trust Co. of New York* v. *Dawson Partners Ltd.* [1927] 27 Ll.L. Rep. 49, *Rayner* v. *Hambros Bank Ltd.* [1943] 1 K.B. 37, *Bank Melli Iran* v. *Barclays Bank* [1951] 2 Ll.L. Rep. 367, *Lamborn* v. *Lake Shore Banking Co.* [1921] 196 App. Div. 504 at p. 507 ; 188 NYS 162 at p. 164 and *Laudisi* v. *American Exchange National Bank* [1924] 239 NYS 234 ; 146 N.E. 347 at 348 referred to.

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3(a) The powers of this Court under Article 136 of the Constitution though untrammelled, are subject to self-ordainerd restrictions. The Court does not, as a matter of rule, interfere with interlocutory orders, save under very exceptional circumstances. [327 H]

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(b) In the instant case there was no justification for the High Court to grant a temporary injunction under order 39 rules 1 and 2 of C.P.C. to the sellers, the effect of which virtually was to restrain a transaction between a banker and a banker. Courts view with disfavour the grant of such temporary injunction. The High Court has prejudged the whole issue by holding that the appellant could not unilaterally impose the conditions of payment 'under reserve' nor was it justified in holding that the documents were 'clean'. [328 B]

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 132 of 1980.

Appeal by Special Leave from the Judgment and Order dated 17.10.79 of the High Court of Bombay in Appeal No. 382 of 1979 in Suit No. 1028/78.

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F.S. Nariman, P.H. Parekh, K.R. Modi, R.A. Kapadia, Raian Karnjawala and *M.H. Shah* for the Appellant.

K.K. Venugopal, Vinay Bhasin, Rakesh Sahani, Vineet Kumar, G.E. Vahanvati and *S.J. Thacker* for Respondent No. 1.

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A *Soli J. Sorabjee, E.J. Balsara, S. Ganesh, Narain* and *P.H. Amin* for Respondent No.2 .

Lal Narain Sinha, Attorney General of India, *Ram Balak Mahto* and *B.P. Singh* for Respondent No. 3.

B The Judgment of the Court was delivered by

SEN, J. This appeal by special leave is from an order of the Bombay High Court dated August 24, 1979, granting a temporary injunction restraining the appellant, the United Commercial Bank. By this order the appellant has been restrained from making a recall C of a sum of Rs. 85,84,456 paid by it under reserve against the relative bills of exchange drawn against the letter of credit issued by it, from respondent No. 1, the Bank of India, and in terms of the letter of guarantee or indemnity executed by that Bank, in a suit based on a bankers' letter of credit.

D The facts are somewhat complicated, but it is necessary to disentangle the facts to bring out the point of law involved.

The respondent No. 2, Messrs Godrej Soaps Limited, hereinafter referred to as 'the plaintiffs', by a contract dated February 2, 1978 agreed to supply to the respondent No. 3, the Bihar State Food E and Civil Supplies Corporation Limited, hereinafter referred to as 'the Bihar Corporation', one thousand metric tonnes of 'Sizola Brand pure Mustard oil' the total value of which was approximately Rs. 86 lacs, packed in brand new leakproof 62,040 tins of net 16 kg. each at the rate of Rs. 137 per tin. The contract provided *inter alia* that the Bihar Corporation were to open a letter of credit F with the appellant, the United Commercial Bank, for the said amount, which the Bihar Corporation duly did.

The letter of credit issued by the appellant was in the following terms :

G United Commercial Bank
Nariman Point Branch

United Commercial Bank
Frazer Road, Patna Branch, 13th June, 1978.

H Office :
Malbourne Road,
Calcutta-1.

To
M/s Godrej Soaps Ltd., A
Eastern Express Highway,
Vikhroli, Bombay 400 079.

Dear Sirs,

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LETTER OF CREDIT No. 1/78

At the request of Bihar State Food & Civil Supplies Corpn. Ltd., Patna, we hereby establish our confirmed irrevocable Letter of Credit in favour of your goodself for account of Messrs Bihar State Food & Civil Supplies C Corpn. Ltd., East Boring Road, Patna, for any sum or sums not exceeding in all Rs. 86,00,000 (say Rupees eighty six lakhs only) outstanding at anyone time available by your drafts at sight drawn on Messrs Bihar State Food & Civil Supplies Corpn. Ltd. without recourse to drawers for full invoice value of merchandise to be described in the D invoice as : 62040 tins of Sizola Brand Pure Mustard Oil packed in brand new leak proof tins of net 16 kgs. each @ Rs. 137 (Rupees one hundred thirty seven only) per tin. Despatched from Bombay accompanied by the following documents :

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(i) Signed detailed invoices in duplicate.

(ii) Railway Receipts consigned to or endorsed in favour of UNITED COMMERCIAL BANK marked 'FREIGHT/ TO PAY' evidencing despatch by Railway of the merchandise as stated above.

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Signed Delivery order on your godown at..... fvg. United Commercial Bank covering the delivery of the above-mentioned merchandise.

(iii) Insurance Policies or Certificate covering usual transit risks and rail issued in duplicate and endorsed in G blank by Transit Insurance at the cost of openers not exceeding one per cent of value of goods to be effected by beneficiary and to be included in the invoice.

Railway Receipt/Delivery order must be dated not later than H 13.7.1978.

A Bills of Exchange must be dated and negotiated not later than 20.7. 1978.

sd. Accountant sd. Manager.

B The schedule annexed specified the various destinations to which the goods were to be despatched.

Between June 22, 1978 and June 26, 1978, the plaintiffs from time to time despatched an aggregate of 24,400 tins of their mustard oil by invoices bearing Nos. 4501 to 4520 of the aggregate value of Rs. 36,52,960 to various destinations mentioned in the schedule annexed to the letter of credit. Between June 17 to July 1, 1978 the plaintiffs further despatched an aggregate of 23,080 tins of the said goods covered by invoices Nos. 4521 to 4539 of the aggregate value of Rs. 34,70,312 on July 7 and 8, 1978 the plaintiffs also despatched an aggregate of 10,560 tins covered by invoices Nos. 4540 to 4547 of the aggregate value of Rs. 14,61,184.

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The plaintiffs presented the documents for payment of Rs. 85,84,456 in two lots. There were twenty sets of documents in the first lot, the total value of which was Rs. 36,52,960, the second lot in 27 sets of the total value of Rs. 49,31,496. The first lot consisted of four sets of the value of Rs. 7.30 lacs, seven sets of Rs. 12.78 lacs, five sets of Rs. 9.13 lacs and four sets worth Rs. 7.30 lacs, the second of 27 sets, consisting of 19 sets of Rs. 34.17 lacs and 8 sets of Rs. 14.16 lacs. It is these two lots of documents which are the subject matter of the suit.

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F When the documents were presented by the plaintiffs for payment of Rs. 36,52,960 against the first lot of 20 sets, and Rs. 49,31,496 against the second lot in 27 sets, the appellant, United Commercial Bank refused to make payment 'except under reserve' on the ground of 'discrepancies'. The main discrepancy was that the goods were described in the railway receipts as "Sizola Brand Pure Mustard Oil 'Unrefined"'. The plaintiffs accordingly instructed their bankers, the Bank of India, to accept payment of Rs. 36,52,960 against the first lot of documents 'under reserve'. The appellant accordingly made an aggregate payment of Rs. 36,52,960 to the Bank of India, that is, the negotiating bank, by three cheques of Rs. 7,30,502, Rs. 12,78,636 and Rs. 16,43,832. It is significant to note that Bank of India in their turn credited the account of the plaintiffs, who were their constituents, also 'under reserve', with a

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specific notation that 'it was paid under reserve on account of discrepancies'. A

As regards the second lot comprising of 27 sets of documents, 19 sets were presented by the plaintiffs on July 3, 1978, with sight drafts of Rs. 1,82,648 each along with bills of exchange together with the relevant documents. On July 5, 1978 the appellant addressed a letter to the plaintiffs refusing to make any payment under the letter of credit due to 'discrepancies' as well as some of the railway receipts being 'stale'. It was clearly stated by the appellant "We are unable to negotiate the documents and are returning the same to you. However, if you so desire, we shall send the documents on collection basis and shall remit the amount to you on receipt of proceeds". Admittedly, the discrepancies remained till July 12, 1978 as the description of goods in the railway receipts still remained "Sizola Brand Pure Mustard Oil 'Unrefined'" till the plaintiffs made a request to the Central Railways for the deletion of the word 'Unrefined'. B C D

On July 12, 1978 the appellant addressed a letter to the Bank of India making a demand for the refund of the amount of Rs.36,52,960 paid under reserve in respect of the first lot of documents stating "In this connection we wish to state that we are now advised by our Patna Office that the bills are not acceptable to the Corporation due to discrepancies. We shall therefore, thank you if you kindly remit the amount with interest at 5 per cent from the date of payment to you by us to the date of payment by you to us." On the same day, the appellant addressed a letter to the plaintiffs in regard to the second lot of 27 documents that the documents were not acceptable due to discrepancies and, therefore, no payment could be made against them under the letter of credit. On the next day, i.e., July 13, 1978 the plaintiffs addressed a letter to the appellant in respect of the first lot of 20 documents 'negotiated and paid by you under reserve', stating that the word 'Unrefined' in the railway receipts should not have been treated as a discrepancy, forwarding copies of telegrams sent by the Central Railway to the various destinations deleting the word 'unrefined', with a request that the appellant may, as regards the 27 documents of the second lot, 'negotiate the documents and pay for the same forthwith'. On the same day, the plaintiffs also addressed a letter to the Bihar Corporation stating that the word 'Unrefined' had no relation to the quality but was inserted for the purpose of paying a lower freight, and further that the railway authorities had agreed to amend the railway receipts by deleting the word 'Unrefined'. E F G H

A On July 13, 1978 the plaintiffs addressed the following letter to their bankers, the Bank of India :

July 13, 1978.

Bank of India,
B Foreign Exchange Dept.,
Mahatma Gandhi Road,
Bombay 400 023.

Attn : *MR. SIRUR*

Dear Sirs.

C

19 documents for Rs. 1,92,648 each drawn under L/C No. 1/78 dated 13.6.1978 of United Commercial Bank Patna Office.

We are enclosing 19 documents as referred to above
D and request you to forward the same to the United Commercial Bank, Nariman Point, Bombay for negotiations of payment.

We request you to collect these funds forthwith and credit our Cash-Credit Account No.1 with you.

E

We have complied with all the terms and conditions of the Letter of Credit and feel that United Commercial Bank would make the payment to you without reserve. *You may accept the payment under reserve if insisted upon by them.*

F

Asst.Financial Controller

The Bank of India accordingly wrote letter to the appellant stating "we would accept payment under reserve". On July 14, 1978 the appellant addressed a letter to the Bank of India returning
G the 27 documents relating to the second lot signifying their inability to negotiate the documents due to discrepancies in the description of goods in the railway receipts, stating that mere deletion of the word 'Unrefined' could not make the railway receipts clean, and furthermore, because some of the railway receipts were 'stale'. It also
H intimated the plaintiffs by their letter of even date that they could lift the 'reserve' without obtaining prior permission of their constituents i.e. the Bihar Corporation.

The plaintiffs, being apprehensive that their bankers, the Bank of India, would be bound to refund Rs.36.52 lacs pursuant to the notice of demand served by the appellant inasmuch as the payment was made under reserve, kept a plaint ready on July 17, 1978 for grant of a perpetual injunction against the appellant, and on the same day addressed a letter to the appellant asking for payment of Rs.49,31,496 against the second lot of documents, enclosing a letter of guarantee or indemnity executed by their bankers, which reads :

Date July 17,1978

United Commercial Bank,
Nariman Point,
Bombay 400021.

Attn : *Mr.P.K. Sharma*

Dear Sirs,

Letter of Credit No. 1/78 of your Patna Office dated 13.6.78—Two sets, each containing 19 & 8 negotiable documents.

We are in receipt of your letters bearing No. Fex/Exp/78 dated 12.7.78 and 14.7.78 on the above subject.

We refer to our submission of 19 documents through our bankers, Bank of India and 8 documents submitted directly by us to you for negotiation and payment. We learnt from you that you have returned the set of 19 documents to Bank of India pointing out certain discrepancies in the documents to them. The set of 8 documents has been returned to us by you stating certain discrepancies under cover of your letter Fex/Exp/GSR/78 dated 12.7.78.

One of the discrepancies pointed out by you in both the sets of documents (19 & 8) is regarding the appearance of the word 'unrefined' in the railway receipts, as the same word does not appear in the Letter of Credit along with the words "Sizola Brand Pure Mustard Oil". Out of abundant precaution, we then obtained and gave you copies of telegrams issued by the Central Railway to the Station Masters of the various destination stations, to which the goods were booked, to the effect that the word "unrefined" is superfluous and, therefore, deleted. You have taken

A the stand that by this action of the Central Railway also the documents still does not continue to be in accordance with the letter of credit.

Out of abundant precaution, we are now submitting herewith the railway receipt returned by you wherein the B word "unrefined" has been physically deleted by the railway authorities.

We are also enclosing a letter of undertaking which is letter of undertaking issued by our bankers, the Bank of India, in your name indemnifying you against demurrage, C wharfage and such other charges which you may have to pay at various destinations, where the goods have been consigned. This action of ours is without prejudice to any of our rights and contentions.

We now request you to Pay for these documents D forthwith.

Director.

The Bank of India executed a letter of indemnity or guarantee to the effect :

Bank of India
E 70/80, M.G.Road
Bombay-400023.
18th July, 1978.

United Commercial Bank,
Mafatlal Centre,
Nariman Point Branch,
Bombay.

F

Dear Sirs,

In consideration of your having negotiated Documentary Bills of Exchange drawn by Godrej Soaps Ltd., drawn on Bihar State Food & Civil Supplies Corpn. dated (various dates) under the commercial letter of credit. No. L/C 1/78 G dt.13. 6.78 issued by United Commercial Bank, Frazer Road Branch for account of Bihar State Food and Civil Supplies Corpn., We hereby 'unconditionally' agree to hold you harmless and indemnified for all consequences of non-acceptance and/or non/payment of this/these bill (s) H exchange by reason of the following discrepancies claims by you:

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We have made arrangements for due payment of this/ these bill (s).

We further unconditionally agree that in the event of the bills being dishonoured on due presentation on account of the above discrepancies claimed by you to reimburse and on demand the equivalent of the above mentioned bill(s) together with all other expenses, demurrage and all such other charges incurred by you in connection with dishonoured bill (s). B

Notwithstanding anything contained hereinbefore our liability under this bond is restricted to Rs. 86,00,000 (Rupees Eighty Six lacs only) apart from charges enumerated above and it will remain in force till 17.8.1978. Unless a claim under the guarantee is made against us in writing and received by us before that date all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liability thereunder. C D

for BANK OF INDIA
sd. P. Accountant sd. P. Manager

It is significant to note that it was represented by the Bank of India acting on behalf of the plaintiffs,"We have made arrangements for the payment of these bills", meaning thereby that the Bihar Corporation had agreed to retire the bills of exchange. E

On July 19, 1978 the representative of the plaintiffs, Messrs Godrej Soaps Ltd. met the representatives of the appellant, the United Commercial Bank at Bombay. It was pointed out to him that first set of 20 documents had not been accepted by the Bihar Corporation due to discrepancies and that the appellant had, therefore, by their letter dated July 12, 1978 made a demand for refund of Rs. 36,52,960. As regards the second lot of 27 documents towards which the balance amount of Rs. 49,31,496 was payable to the Bank of India, in terms of the letter of indemnity or guarantee executed by it, he was informed that the instructions were awaited from the head office and was asked to come in the evening on the same day. The plaintiffs on the same day, i. e., on July 19, 1978, brought the suit in the Original Side of the Bombay High Court alongwith an application for the grant of a temporary injunction to restrain the appellant from recalling the amount of F G H

A Rs. 36,52,960 but the learned Single Judge, Bharucha J., declined to grant an *ex parte ad interim* injunction, while allowing liberty to the plaintiffs to take out notice of motion returnable on August 4, 1978 but it appears that no such notice was ever taken out.

B When the appellant came to know of the suit, the plaintiff's representative made an endorsement at the foot of the letter dated July 17, 1978:

> As per Mr. Sharma's talk with Mr.K.R. Gokulam we hereby undertake not to proceed with this suit.
>
> C sd.R.V. Shekar
> 19.7 1978

On the faith of the undertaking the appellant made payment of Rs.49,31,496 to the Bank of India in terms of the letter of indemnity.

D

There is controversy between the parties as to what transpired before the payment of Rs.49,31,496 and as to the meaning of the aforesaid endorsement. We refrain from making any observations as they would tend to prejudice the rights of the parties. But one thing is clear that R.V. Shekar, Assistant Financial Controller, E Godrej Soaps was acting on behalf of the plaintiffs, and the word 'we' meant Messrs. Godrej Soaps Limited'. Further, that payment was secured by making the endorsment.

The Bank of India addressed two letters dated July 20,1978 to the plaintiffs, that their account had been credited with F Rs. 34,70,312 and Rs. 14,61,184 i.e., Rs. 49,31,496 representing the value of the second lot of 27 documents, 'under reserve'.

From the narration of these facts, *prima facie* it appears that the payment of Rs. 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India, was a payment made G 'under reserve' and that of Rs. 49,31,496 was also made 'under reserve' as well as against the letter of guarantee or indemnity executed by it.

On August 2, 1978 the appellant served a letter of demand H on the Bank of India, for refund of Rs. 85,84,456 together with interest thereon at 15% per annum from the date of payment by it to the date of refund, stating that the bills of exchange had not

been retired by the Bihar Corporation, that is the buyers, due to discrepancies. The letter reads : A

Fex/exp/1110/78 2nd August, 1978
Bank of India
70/80 M.G. Road, Bombay 400 023.

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Attn: Mr. PUDVAL, Manager (Advance)

Dear Sirs,

Re: Your Guarantee Re. C/72/943 dated 18th July 1978 in our favour for Rs.86,00,000 Document drawn by M/s Godrej Soaps Ltd., under our Frazer Road, Patna Branch L/C 1/78 dated 13.6.1978—negotiated by us under reserve. C

Please refer to our letter No. 646/78 dated lst August, 1978.

In this connection we are now advised by our Patna Office that the bills have not been accepted by the drawees, Bihar State Food & Civil Supplies Corporation Limited due to the discrepancies. Our Patna Office is, therefore, arranging to return the documents to us which we hereby undertake to forward to you when received. D

In terms of your Guarantee No. 8/72/943 dated 18th July 1978 tor Rs. 86,00,000 and in terms of our letters date 24.6.1978, 27.6.1978 and 28.6.1978 and two letters of 19.7.1978, under cover of which we had made payment of the bills to you, we hereby call upon you to refund to us the amount of bills viz. Rs. 85,84,456 (Rupees Eighty five lacs eighty four thousand four hundred and fifty six) together with interest from the date of payment by us to you to the date of refund by you to us @ 15%per annum. E F

In the meantime, please note that the documents are held by us at your sole risk and responsibility. You may, if you so desire protect the merchandise including keeping insurance covernote valid. G

.....

Please treat this as MOST URGENT. H

sd.....Manager

A The 47 Notary's protest Certificates show that when the bills of exchange were re-presented for payment to the Bihar Corporation on August 2, 1978 the drawees dishonoured the bills of exchange on August 3, 1978 for the reason that (1) the railway receipts accompanying the bills were 'stale', (2) the goods had not been supplied as per the terms of agreement, and (3) the chemical analysis B showed that the oil required refinement before being fit for human use,.

The Bank of India accordingly addressed a letter to the plaintiffs on the next day i.e. August 4, 1978 giving intimation that the appellant by its letter dated August 2, 1978 had made a demand C for refund of the amount of Rs. 85,84,456 paid under reserve and in terms of its letter of guarantee or indemnity, seeking their 'instructions' in the matter. On August 6, 1978 which was a Sunday, the plaintiffs moved learned Single Judge at his residence, alongwith an affidavit of their Sales Manager stating that unless an injunction was granted the Bank of India, according to the banking practice, D would make payment of Rs. 85,84,456/- to the appellant, on the commencement of the banking hours on August 7, 1978. The learned Single Judge granted an *ex-parte ad interim* injunction restraining the appellant from recalling or receiving the amount due from the Bank of India.

E On December 17, 1978, the learned Single Judge appointed the Court receiver to be the *ad interim* receiver with power to sell the goods in question either in one lot or separate lots, on 'as is where is basis', without any obligation or liability to purchasers thereof as to quality, quantity or edibility of the said goods. On March 27, 1979 the Court receiver accepted the offer of the plaintiffs to buy the goods F for Rs. 18,53,000 and the sale was confirmed by the High Court on April 4, 1979.

The learned Single Judge by his order dated August 24, 1979 made the temporary injunction absolute till the disposal of the suit on the view that the appellant was not entitled under the terms of the G letter of credit, to unilaterally impose the condition of payment 'under reserve' or refuse to pay against the documents tendered by the plaintiffs merely because of the alleged discrepancies, nor was it open to it to reject the documents as stale, for in his view, there were indeed no stale documents. Upon these grounds, he held that the H plaintiffs had a *prima facie* case. He, however, added a rider that (1) the Bank of India was left free to decide whether or not the conditions for payment under the letter of indemnity had been satisfied so

as to justify the making of payment thereunder to the appellant, and (2) the appellant was not restrained from making a claim upon the Bank of India or from receiving from it the amount payable in terms of the letter of indemnity nor was the Bank of India restrained from making payment thereunder. A

The appellant being aggrieved by the order of the learned Single Judge dated August 24, 1979 preferred an appeal but a Division Bench of the High Court summarily dismissed the appeal on October 17, 1979. B

The result of all this has been that the plaintiffs have not only received Rs. 85,84,456 towards the price of 1000 metric tonnes of 'Sizola Brand Pure Mustard Oil', but also have the mustard oil in question on payment of Rs. 18,53,000. C

The repercussions arising from the learned Single Judge's order dated August 24, 1979 are reflected in the correspondence that ensued between the parties. There is no need to refer to all the letters except a few. The plaintiffs by their solicitor's letter dated August 29, 1979, drew the attention of the Bank of India to the learned Single Judge's order granting injunction, and 'instructed' it not to pay. It reads : D

> The said interim order makes it absolutely clear that our clients will in no way be liable and responsible to return the amounts received under reserve and therefore our clients are in no way liable to pay any sum to UCO Bank and therefore you are also not liable at present to pay any sum to UCO Bank under the said letter of indemnity. In the circumstances, it will not only be improper but illegal for you to make any payment to UCO Bank. E F
>
> In the circumstances, we have been instructed by our clients to request you which we hereby do not to make any payment to UCO Bank. In spite of what is stated herein, if any payment is made by you to UCO Bank, the same will not be binding on our clients and you will not be entitled to debit such amount to our clients current account with you and our clients will refuse to reimburse you any sum so wrongfully paid by you. Please note that if any payment is made by you, it will be entirely at your risk and peril. G H

The appellant by its letter dated August 31, 1979 addressed to the Bank of India made a demand for payment of Rs. 85,84,456 in

terms of the letter of guarantee or indemnity. But this was of not avail since the Bank of India as instructed by the plaintiffs, sent a letter dated October 16, 1979 to the appellant, by which it referred to the order passed by the learned Single Judge, and refused to make any payment, stating :

> In its order dated 24th August, 1979 the Court has stated that there is no provision regarding staleness of the Railway Receipts in the letter of Credit and it is not open to Bihar Food Corporation to recall the payments made on that ground. Further, it is stated in the said order that 'the protests made upon dishonour of the bills by these second defendants show that no discrepancy was made a ground of dishonour.
>
> Having regard to the observations in the order of the Court, it cannot be said that the Bills were dishonoured on the presentation on account of the discrepancies. Further, the bills do not appear to have been duly presented.
>
> We understand that you have not appealed against this order. In view of the aforesaid observations in the said order dated 24th August, 1979 the terms of the indemnity cannot be said to have been complied with so as to enable us to make payment to you.

The Bank of India went on to say that in the circumstances set out above, it had been advised that it was not proper for it to make any payment under the letter of guarantee to the appellant unless it was established in proper proceedings that the terms of the mandate had been complied with so as to entitle it to receive payment and to enable the Bank of India to make payment to it. This was contrary to its earlier stand taken in the affidavit filed in June, 1979, in opposition to the notice of motion, by which it denied that 'it was trying to wriggle out of its obligations' under the letter of guarantee or indemnity and by which it said that it 'submits to the order of the Court'.

The main point in controvery is: Whether the Court should in a transaction between a banker and a banker grant an injunction, at the instance of the beneficiary of an irrevocable letter of credit, restraining the issuing bank from recalling the amount paid under reserve from the negotiating bank, acting on behalf of the beneficiary against a document of guarantee/indemnity at the instance of the

beneficiary ? Another question also arises as to whether the Court should not in a matter like this, depart from its normal practice, and refuse to interfere with an interlocutory order under Art. 136 of the Constitution.

The nature of the contractual obligations flowing from a banker's letter of irrevocable credit and more particularly, the rights of the seller as the accredited party or beneficiary of the credit, against the issuing and drawee bank was dealt with by this Court in *Tarapore and Co. Madras* v. *Tractors Export, Moscow and Anr.*(1) It was held that the opening of a confirmed letter of credit constitutes a bargain between the banker and the seller of the goods which imposes on the banker an absolute obligation to pay. It was, however, pointed out relying on a passage in "Chalmers' Bills of Exchange" that it can hardly be over-emphasised that the banker is not bound or entitled to honour the bills of exchange drawn by the seller unless they, and such accompanying documents as may be required thereunder, are in exact compliance with the terms of the credit'. Such documents must be scrutinised with meticulous care. If the seller has complied with the terms of the letter of credit, however, there is an absolute obligation upon the banker to pay irrespective of any disputes there may be between the buyer and the seller as to whether the goods are up to contract or not. The Court relied upon the two decisions in *Hamzeh Malas and Sons* v. *British Imex Industries Ltd.*(2) and *Urguhart Lindsay and Co. Ltd.* v. *Eastern Bank Ltd.*(3) and observed at p. 930 of the Report, that the refusal of the bank to honour the bills of exchange drawn by the seller on presentation of the proper documents constituted a repudiation of the contract as a whole, and the sellers were entitled to damages arising from such a breach.

In *Stein* v. *Hambro's Bank of Northern Commerce*(4) a contract for the sale of hides by an English seller to a buyer from Venice, to be shipped from India, was financed by an irrevocable letter of credit. The buyer, contending that a condition had not been met, instructed the bank to cancel the credit and to refuse acceptance, which was accordingly done. In an action by the seller against the issuing bank it was held that there had been a breach of the letter of credit contract and that the seller could recover the amount of the bill of

(1) [1969] 2 S.C.R. 920.
(2) [1958] 2 Q.B. 127.
(3) [1922] 1 K.B. 318.
(4) [1921] 9 Ll.L. 433, rev. [1922] 10 Ll.L. Rep. 529 (CA).

A exchange for which acceptance was refused. The case was concerned chiefly with the question of the measure of damages. The right of the seller to maintain the action, if the conditions had been met, seems to have been assumed without discussion. The theory underlying this result is that the issuing bank is not concerned with the sales contract at all. Rowlatt J. said :

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> The obligation of the bank is absolute, and is meant to be absolute, that when the documents are presented they have to accept the bill. That is the commercial meaning of it.

C The fulfilment of the terms of the sales contract is a matter for the seller and the buyer alone.

In *Urguhart, Lindsay and Co. Ltd.* v. *Eastern Bank Ltd.* (supra) Rowlatt J. held that the position of the banker under an irrevocable credit is in law the same as that of a person who has contracted to D buy a shipping document representing the goods shipped, or to be shipped, under the contract between the beneficiary and the person at whose instance the credit has been issued. The credit in this case was opened in pursuance of a contract between Urguhart, Linsday and Co. and Benjamin Jute Mills, by which the former were to manufacture certain machinery and deliver it f.o.b. Glasgow, for E shipment to Calcutta. Two instalments of the machinery were manufactured and shipped and duly paid for by the bank. A third instalment was also manufactured and shipped, but the bank in this case refused to take up the shipping documents and honour the draft on the ground that items for extra cost of labour were included in the invoice price of the goods and that the bank had been instructed F by Benjamin Jute Mills to refuse payment in those circumstances. Rowlatt J. held that in such a case, the banker must accept and pay for the documents irrespective of any defence which there may be to a claim under the contract of sale and that such defence is solely a matter to be fought out between the buyer and the seller. G

In Gutteridge and Megrah's Law of Bankers' Commercial Credits, Sixth Edn. p. 21, the nature of the obligation created by a banker's commercial credit is succinctly stated. A seller of goods relying on such an instrument believes that he has 'the direct obligation of the issuing bank running in his favour, enforceable by him H against that bank, that it will pay his drafts if drawn in compliance with the terms of the letter of credit'. Banks are not concerned with

the sales contract or the goods ; if it were otherwise credit business would be impossible.

Banker's commercial credits are almost without exception everywhere made subject to the code entitled the 'Uniform Customs and Practices for Documentary Credits', by which the General Provisions and Definitions and the Articles following are to "apply to all documentary credit and binding upon all parties thereto unless expressly agreed". A banker issuing or confirming an irrevocable credit usually undertakes to honour drafts negotiated, or to reimburse in respect of drafts paid, by the paying or negotiating intermediate banker and the credit is thus in the hands of the beneficiary binding against the banker. The credit contract is independent of the sales contract on which it is based, unless the sales contract is in some measure incorporated. Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the terms of the paying or negotiating bank, the beneficiary cannot claim against the paying bank and it is the paying bank's duty to refuse payment.

General Provision (c) of the Uniform Customs states that :

> (c) Credits, by their nature, are separate transactions from the sales or other contracts on which they may be based and banks are in no way concerned with or bound by such contracts.

and Article 8 emphasises this in providing that :

> (a) In documentary credit operations all parties concerned deal in documents and not in goods.

The authorities are uniform to the effect that a letter of credit constitutes the sole contract with the banker, and the bank issuing the letter of credit has no concern with any question that may arise between the seller and the purchaser of the goods for the purchase price of which the letter of credit was issued. There is also no lack of judicial authority which lay down the neceesity of strict compliance both by the seller with the letter of credit and by the banker with his customer's instructions. In *English, Scottish and Australian Bank Ltd.* v. *Bank of South Africa* (1) Bailhache, J. said :

(1) [1922] 13 Ll.L. Rep. 21 st. 24.

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> It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened.

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As Lord Sumner said in *Equitable Trust Co. of New York* v. *Dawson Partners Ltd.*,(1) approving the dictum of Bailhache J. :

C

> It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines.

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In *Rayner* v. *Hambros Bank Ltd.*(2) the credit called for documents covering a shipment of 'Coromandel groundnuts' ; the invoice tendered was for Coromandel groundnuts, but the bill of lading evidenced a shipment of 'machine-shelled groundnut kernels'; country of origin : British India, and Hambros Bank refused to pay on the ground that the letter of credit called for an invoice and bill of lading both covering a shipment of 'Coromandel groundnuts' whereas the bill of lading did not describe the goods in those terms, their attitude being upheld by the Court of Appeal.

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Mackinnon, L.J. after quoting Bailhache, J., in *English, Scottish and Australian Bank Ltd.* v. *Bank of South Africa* (supra) and Lord Sumner in *Equtiable Trust Co. of New York* v. *Dawson Partners Ltd.* (supra) laying down that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms, observed :

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> The defendant bank were told by their Danish principals to issue a letter of credit under which they were to accept documents—an invoice and bills of lading—covering "Coromandel groundnuts in bags". They were offered bills of lading covering "machine-shelled groundnut "kernels". The country of origin was stated to be British

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(1) [1927] 27 Ll.L. Rep. 49.
(2) [1943] 1 K.B. 37.

India. The words in that bill of lading clearly are not the same as those required by the letter of credit. The whole case of the plaintiffs is, in the words of Lord Sumner, that "they are almost the same, or they will do just as well". The bank, if they had accepted that proposition, would have done so at their own risk. I think on pure principle that the bank were entitled to refuse to accept this sight draft on the ground that the documents tendered, to bill of lading in particular, did not comply precisely with the terms of the letter of credit which they had issued.

The learned Judge dealing with that part of the judgment of Atkinson, J., in which he said that "a sale of Coromandel groundnuts is universally understood to be a sale of machine-shelled kernels", said :

When Atkinson, J., says that it is "universally understood" he means that these gentlemen from Mincing Lane have told him : "We dealers in Mincing Lane all understand these things. We understand that 'Coromandel groundnuts' are machine-shelled kernels, and we understand when we see 'C.R.S.' that that means 'Coromandels'. I think that is a perfectly impossible suggestion .. It is quite impossible to suggest that a banker is to be affected with knowledge of the customs and customary terms of every one of the thousands of trades for whose dealings he may issue letters of credit.

In *Bank Melli Iran* v. *Barclays Bank*(1) the documents evidencing a shipment of '100 new, good, Chevrolet trucks' were held not to be a good tender under a credit calling for 'new' trucks. Mc Nair J. held that all the documents tendered and accepted by the defendants were defective and consequently the defendants were not entiled to debit the plaintiff with the amount paid against these documents, although the defendants succeeded on the ground that the plaintiffs had by their conduct ratified the defendant's action in accepting the documents. The *dicta* in American cases are to the same effect. In *Lamborn* v. *Lake Shore Banking Co.* (2) Smith J. said :

A party who is entitled to draw against a letter of credit must strictly observe the terms and conditions under

(1) [1951] 2 Ll.L. Rep. 367.
(2) [1921] 196 Appl. Div. 504 at p. 507; 188 N.Y.S. 162 at p. 164.

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> which the credit is to become available, and, if he does not, and the bank refuses to honour his draft, he has no cause of action against the bank.

Again, Hiscock, C. J. in *Laudisi* v. *American Exchange National Bank* (1) said :

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> The bank has the power and subject to the limitations which are given and imposed by (the customer's) authority. If it keeps within the powers conferred it is protected in the payment of the draft. If it transgresses those limitations, it pays at its peril.

C

The relevant authorities uniformly lay down in dealing with commercial letters of credit that the documents tendered by the seller must comply with the terms of the letter of credit, and that the banker owes a duty to the buyer to ensure that the buyer's instructions relative to the documents against which the letter of credit is to be honoured are complied with. The rights of a banker are described in Halsbury's Laws of England, 4th Edn., vol.3, para 141 at p. 106 :

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> Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the paying or negotiating banker, the beneficiary cannot claim against the paying banker, and it is the paying banker's duty to refuse payment. The documents must be those called for, and not documents which are almost the same or which will do just as well. The banker is not called upon to know or interpret trade customs and terms. It has been held that where mandate is ambiguous and a paying banker acts in a reasonable way in pursuance of it, he may be protected. But this general rule cannot be stretched so far as to protect a banker who pays against documents describing goods in terms which are similar to, but not exactly the same as, those stipulated in the credit.

The description of the goods in the relative bill of lading must be the same as the description in the letter of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in

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(1) [1924] 239 N.Y. 234: 146 N.E. 347 at 348.

fact, the same. It is the description of the goods that is all important. The reason for this requirement is stated in Davis' Law Relating to Commercial Letters of Credit, 2nd Edn. p. 76 :

> It is not only the buyer who faces the risk of dishonesty or sharp practice on the part of the seller. For, in many instances, the banker looks to the goods for reimbursment of the whole or part of the amount he pays under the letter of credit. It is equally to his interests to ensure that such documents are called for by the letter of credit as will result in goods of the contract descripton being ultimately delivered. The buyer is not compelled to enter into the sales contract nor ,is the banker compelled to issue the letter of credit. If either of these contracts is entered into then it is for the buyer and the banker respectively to safeguard themselves by the terms of the contract. Otherwise they must be prepared to bear any ensuing loss.
>
> But the liability thus imposed on the issuing banker carries with it a corresponding right that the seller shall, on his part, comply with the terms of the letter of credit and the seller's obligations have been construed as strictly as those of the banker.

We have already referred to the statement of law in Halsbury's Laws of England which found a place in Paget's Law of Banking, 8th Edn. p.648, and we may at the risk of repetiton reproduce the same, to the effect :

> Unless documents tendered under a credit are in accordance with those for which the credit calls and which are embodied in the promise of the intermediary or issuing banker, the beneficiary cannot claim against him; and it is the banker's duty to refuse payment. The documents must be those called for and not documents which are almost the same or which seem to do just as well.

It the light of these principles, 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

A which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit.

It is somewhat unfortunate that the High Court should have granted a temporary injunction, as it has done in this case, to restrain the appellant from making a recall of the amount of B Rs. 85,84,456 from the Bank of India in terms of the letter of guarantee or indemnity executed by it. The courts usually refrain from granting injunction to restrain the performance of the contractual obligations arising out of a letter of credit or a bank guarantee between one bank and another. If such temporary injunctions were to be granted in a transaction between a banker and a banker, restraining C a bank from recalling the amount due when payment is made under reserve to another bank or in terms of the letter of guarantee or credit executed by it, the whole banking system in the country would fail.

In view of the banker's obligation under an irrevocable letter D of credit to pay, his buyer-customer cannot instruct him not to pay. In *Hamzeh Malas* v. *British Imex Industries Ltd.* (1) the plaintiffs, the buyers, applied for an injunction restraining the sellers, the defendants, from drawing under the credit established by the buyer's bankers. This was refused, Jenkins, L.J. stating, at p. 129, that :

E > .....the opening of a confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods which imposes on the banker an absolute obligation to pay...

and that 'this was not a case in which the Court ought to F exercise its discretion and grant the injunction'. The same considerations apply to a bank guarantee.

A letter of credit sometimes resembles and is analogous to a contract of guarantee. In *Elian and Anr* v. *Matsas and Ors.* (2) Lord Denning, M.R., while refusing to grant an injunction stated :

G > .....a bank guarantee is very much like a letter of credit. The courts will do their utmost to enforce it according to its terms. They will not in the ordinary course of things, interfere by way of injunction to prevent its due implementation. Thus they refused in *Malas* v. *British Imex Industries*

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(1) [1958] 2 Q.B. 127.
(2) [1966] 2 Ll. Rep. 495.

Ltd. But that is not an absolute rule. Circumstances may arise such as to warrant interference by injunction.

A Bank which gives a peformance guarantee must honour that guarantee according to its terms. In *R.D. Harbottle (Mercantile) Ltd.* v. *National Westminster Bank Ltd.*, (1) Kerr, J. considered the position in principle. We would like to adopt a passage from his judgment at p. 761 :

> *It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the life-blood of international commerce.* Such obligations are regarded as collateral to the underlying rights and obligations between the merchants at either end of the banking chain. Except possibly in clear cases of fraud of which the banks have notice, the courts will leave the merchants to settle their disputes under the contracts by litigation or arbitration as available to them or stipulated in the contracts. The courts are not concerned with their difficulties to enforce such claims; these are risks which these merchants take. In this case the plaintiffs took the risk of the unconditional wording of the guarantees. *The machinery and commitments of banks are on a different level. They must be allowed to be honoured, free from interference by the courts. Otherwise, trust in international commerce could be irreparably damaged.*
>
> (Emphasis supplied.)

The observations of Kerr, J. have been cited with approval by Lord Denning, M. R. in *Edward Owen Engineering Ltd.* v. *Barclays Bank International Ltd.*(2)

The appellant was under a duty to its constituent, the Bihar Corporation, to scrutinize the documents, and could not be compelled to make payment particularly when the description in the documents did not tally with that in the letter of credit. It was fully entitled to exercise its judgment for its own protection. When the appellant against the first lot of 20 documents refused to make payment except 'under reserve' and against the second lot of 27 documents even 'under reserve' the remdy of the plaintiffs was to approach the 'openers', i.e., Bihar Corporation, to instruct the appellant to effect

(1) [1977] 3 W.L.R. 752.
(2) [1977] 3 W.L.R. 764.

A a change in the description of the goods from 'Sizola Brand Pure Mustard Oil' to Sizola Brand Pure Mustard Oil "Unrefined" in the letter of credit. Instead of adopting that course, the irregularity in the description in documents tendered for payment was sought to be got over by the plaintiffs by instructing their bankers, the Bank of India, to execute a letter of guarantee or indemnity. When the bills
B of exchange tendered to the Bihar Corporation were dishonoured when presented on August 3, 1978, the legal consequences must follow as between the appellant and the Bank of India. There was the inevitable chain of events which could not be prevented by the grant of an injunction.

C The appellant presumably knew little or nothing about mustard oil. Bankers are not dealers in mustard oil in such a case as this, but dealers in documents only. The appellant as the issuing bank was presented with documents and asked to pay a very large sum of money in exchange for them. Its duty was not to go out and determine by physical examination of the consignments, or
D employment of experts, whether the goods actually conformed to the contracts between the buyer and the seller, nor even determine either from its own or expert advice whether the documents called for the goods which the buyer would be bound to accept. The banker knows only the letter of credit which is the only authority to act, and the documents which are presented under it. If these
E documents conform to the letter of credit, he is bound to pay. If not, he is equally not bound to pay. The letter of credit called for 'Sizola Brand Pure Mustard Oil' while the railway receipts carried the description "Siloza Brand Pure Mutsard Oil 'Unrefined' " and it was not within the province of the appellant to say that the latter description meant identically the same thing as the former.

F In an action against a purchaser for reimbursement, it is only necessary to prove that the goods tendered were the goods purchased, no matter how described, i.e., the purchaser was offered that which he had contracted for, while in such a case as this, in an action by the beneficiary against the issuing bank, it makes no difference
G whether the goods tendered were in fact identical to the goods purchased, the only question being : Did the documents conform to the letter of credit ?

It is clear from the letters addressed by the appellant to the
H Bank of India on June 23, 27 and 28, 1978 that the payment of Rs. 36,52,960 by three cheques for Rs. 7,29,872 Rs. 12,78,536 and Rs. 16,43,833 were payments made under reserve. Admittedly

when these amounts were paid by the appellant to the Bank of India, the railway receipts were not clean because they contained the description "Sizola Brand Pure Mustard Oil " Unrefined". The appellant had taken the precaution of saying "Please note that the payment is made to you 'under reserve' owing to the following discrepancies". There was a foot-note added : "Please note that this payment is made to you subject to repayment on demand of the bill amount, without loss of exchange to ourselves plus interest and other charges incurred by us, and or by our principals, if the documents are not acceptable to the openers or buyers in view of the discrepancies whatsoever". It was also added : "Please also note that this 'reserve' will remain in force until released by us in writing". Acceptance of these amounts by the Bank of India on behalf of the plaintiffs was upon these terms. The Bank of India and the plaintiffs were thus fully aware that the appellant was not prepared to pay except 'under reserve'. The plaintiffs in their letters addressed to the appellant dated June 22 and 23, 1978 had added in ink the post-script : "In case of discrepancies, pay to our bankers, Bank of India". These letters were in respect of 11 out of 20 documents ; it is not suggested that others stand on a different footing. The letters conveyed a request to "negotiate the sight drafts for payment". Thus, the payment of Rs. 36,52,960 against the first lot of 20 documents was 'under reserve' and was also covered by the letter of guarantee or indemnity.

As regards the second lot of 27 documents, the payment of Rs. 49,31,496 the appellant was not prepared to pay even 'under reserve' because the Bihar Corporation had refused to accept the consignment on the ground not only of discrepancies but also because the mustard oil was not fit for human consumption. There was no question of the appellant paying this large sum of money except against the letter of guarantee or indemnity executed by the Bank of India. It was represented by the Bank of India that it had made arrangements for due payment of the bills of exchange. When the bills of exchange were dishonoured on being presented on August 3, 1978 the amount of Rs. 49,31,496 became immediately repayble on demand.

There still remains the question whether the court should interfere with an order of this nature. The Court's powers under Art. 136 of Constitution are untrammelled, but they are subject to self-ordained restrictions. The Court does not, as a matter of rule, interfere with interlocutory orders, save under very exceptional circumstances.

A The grant of a temporary injunction by the High Court under O. 39 rr. 1 and 2 appears to be wholly unwarranted. For reasons already stated, the appellant was within its rights in making a recall of the amount of Rs. 85,84,456 paid 'under reserve' and/or in terms of the letter of guarantee or indemnity. We fail to appreciate any justification for grant of a temporary injunction to the plaintiffs, the B effect of which virtually is to restrain a transaction between a banker and a banker. The courts view with disfavour the grant of such temporary injunction.

In the instant case, the High Court has assumed that the plaintiff has a *prima facie* case. It has not touched upon the C question where the balance of convenience lay, nor has it dealt with the question whether or not the plaintiffs would be put to irreparable loss if there was no injunction granted. In dealing with the *prima facie* case, the High Court assumes that the appellant was in breach. There is no basis for this assumption at all. The High Court in this case has pre-judged the whole issue by holding D that the appellant could not unilaterally impose the condition of payment 'under reserve', nor was it justified in holding that the documents were 'clean'. The question whether the appellant was in breach is an issue to be tried in the suit. The question whether the documents were 'clean' or 'unclean' is a vexed question on which no opinion could be expressed at this stage. It is also premature at this E stage to assume that there was no 'due presentation' of the bills of exchange and their refusal.

No injunction could be granted under O.39, rr. 1 and 2 of the Code unless the plaintiffs establish that they had a *prima facie* case, F meaning thereby that there was a *bona fide* contention between the parties or a serious question to be tried. The question that must necessarily arise is whether in the facts and circumstances of the case, there is a *prima facie* case and, if so as between whom ? in view of the legal principles applicable, it is difficult for us to say on the material on record that the plaintiffs have a *prima facie* case. G It cannot be disputed that if the suit were to be brought by the Bank of India, the High Court would not have granted any injunction as it was bound by the terms of the contract. What could not be done directly cannot be achieved indirectly in a suit brought by the plaintiffs.

H Even if there was a serious question to be tried, the High Court had to consider the balance of convenience. We have no doubt

that there is no reason to prevent the appellant from recalling the amount of Rs. 85,84,456. The fact remains that the payment of Rs. 36,52,960 against the first lot of 20 documents made by the appellant to the Bank of India was a payment under reseve while that of Rs. 49,31,496 was also made under reserve as well as against the letter of guarantee or indemnity executed by it. A payment 'under reserve' is understood in banking transactions to mean that the recipient of money may not deem it as his own but must be prepared to return it on demand. The balance of convenience clearly lies in allowing the normal banking transactions to go forward. Furthermore, the plaintiffs have failed to establish that they would be put to an irreparable loss unless an interim injunction was granted.

It was, however, tried to be impressed upon us that the balance of convenience lay in granting the injunction since the appellant would not be put to any loss because it had furnished the letter of guarantee against 100 per cent margin, i.e. on deposit being made by the Bihar Corporation of Rs. 85,84,456 for meeting the payment to be made under the credit. It was also said that the effect of recalling of Rs. 85,84,456 from the Bank of India will result in the plaintiffs facing a serious credit-freeze, as the Bank of India will, on its turn, recall the amount from the plaintiffs. We are afraid, these considerations cannot prevail. For all these reasons, we are constrained to hold that there was no justification for the High Court to grant a temporary injunction under O. 39 rr. 1 and 2 of the Code of Civil Procedure, 1908.

It the result, the appeal succeeds and is allowed with costs. The order passed by the High Court dated August 24, 1979 granting a temporary injunction restraining the appellant, the United Commercial Bank, from recalling Rs. 85,84,456 from the Respondent No1 , the Bank of India is set aside, and the application filed by the plaintiffs, Messrs. Godrej Soaps Ltd. for the grant of a temporary injunction under O.39, rr.1 and 2 of the Code of Civil Procedure, 1908 is rejected with a direction that the High Court shall try to dispose of the suit as expeditiously as possible, and in any event, within six months from today. The costs of the appellant shall be borne by the Respondents Nos. 1 and 2 equally.

P.B.R. *Appeal allowed.*