

M/S. MILLENIUM WIRES (P) LTD.

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v.

THE STATE TRADING CORPORATION OF INDIA LTD.
AND ORS.

(Civil Appeal No.3103 of 2015 Etc.)

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MARCH 23, 2015

[M.Y. EQBAL AND PINAKI CHANDRA GHOSE, JJ.]

Code of Civil Procedure, 1908 – O. VII r. 11 – Rejection of complaint – Injunction against banks to honour their guarantees – Suit seeking injunction against the Company from claiming any benefit under the Letters of Credit and against the Confirming Foreign Bank to prevent any action or release of funds under the Letters of Credit – Meanwhile application u/O. VII r. 11 CPC by the Confirming Bank – High Court allowed the application but dismissed the complaint as no cause of action was shown against the Confirming Bank – Appeal thereagainst also dismissed – On appeal, held: No cause of action, whatsoever, could be deduced against the Negotiating Bank from the two extracts which formed part of the complaint as also the other facts – Thus, the order of rejection of the complaint by the High Court is upheld.

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Dismissing the appeals, the Court

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HELD: 1.1 Nothing in the complaint except the two extracts even come close to being an allegation against the Negotiating Banks. In the two extracts, there is expression of mere apprehension of the Plaintiffs that Negotiating Banks were in active collusion with the Synergic Companies. No explanation or justification has been made in the complaint as to how this active

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A collusion came about or what makes the plaintiff suspect so. In the plaint not all the evidence with respect to allegations is to be adduced however, a comprehensive narration of facts that constitute cause of action has to be given in the plaint. It is plain and clear that no cause of action, whatsoever, may be deduced against the Negotiating Bank from the extracts which form part of the plaint. [Para 10] [972-A-D]

1.2 The law on injunction against honouring letter of credit by a Bank as summed up by the Single Judge of the High Court is upheld. The Court must be slow in granting an order of injunction restraining the realisation of a bank guarantee or Letter of Credit. There are two exceptions to the said rule that it must be clearly shown that a fraud of a grievous nature has been committed and to the notice of the Bank; and that injustice of the kind which would make it impossible for the guarantor to reimburse himself, or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted. It is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to the bank's knowledge of such fraud. [Para 12] [972-G-H; 973-A-C]

1.3 Injunctions against the negotiating banks for making payments to the beneficiary must be given cautiously as constant judicial interference in the normal practices of market can have disastrous consequences as it affects the trustworthiness of the Indian banks and markets. Furthermore, it appears that the Confirming Bank had forwarded the documents presented by the Company to the Issuing Bank. Out of four Letters of Credit, Issuing Bank had accepted the presentation of documents in two Letters of Credit with

the consultation of the STC. Only one of the presentation was rejected while there is no information with respect to the response of the Issuing Bank on presentation of documents of the fourth Letter of Credit. Even on the Letter of Credit for which the presentation was rejected, the response was made after 19 days while UPC-600 provides that rejection or any objection against the presentation must be communicated to the negotiating bank of the beneficiary within 5 days. [Paras 13, 14] [973-D-G]

Saleem Bhai v. State of Maharashtra (2003) 1 SCC 557; 2002 (5) Suppl. SCR 491; *Popat Kotecha Property v. State Bank of India Association* (2005) 7 SCC 510; 2005 (2) Suppl. SCR 1030; *Sopan Sukhdeo Sable v. Asst. Charity Commissioner* (2004) 3 SCC 137; 2004 (1) SCR 1004 – referred to.

R.D. Harbottle (Mercantile) Ltd. v. National Westminster Bank (1977) 3 WLR 752 – referred to.

Case Law Reference

2002 (5) Suppl. SCR 491 referred to Para 8

2005 (2) Suppl. SCR 1030 referred to Para 8

2004 (1) SCR 1004 referred to Para 8

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 3103 of 2015 etc.

From the Judgment and Order dated 17.12.2013 of the High Court of Delhi at New Delhi in RFA No. 142 of 2013.

WITH

C. A. No 3104 of 2015.

A Neeraj Kishan Kaul, ASG, Atul Nanda, S. Ganesh, Dinesh Agnani, Jaiveer Shergill, Ankul Sood, Pallavi Langar, Piyush Sharma, Leena Tuteja, K. G. Mishara, Devmani Bansal, Gagan Gupta for the Appearing Parties.

B The Judgment of the Court was delivered by

PINAKI CHANDRA GHOSE, J. 1. Leave granted in both the matters.

C 2. These appeals, by special leave, have been preferred against the judgment and order dated 17.12.2013 in RFA (OS) No.142/2013 and judgment and order dated 10.12.2013 in RFA (OS) No.139/2013, passed by the Division Bench of the Delhi High Court by which the High Court dismissed the appeals filed by the appellants. RFA (OS) Nos.142/2013 and 139/2013 were filed by M/s. Millenium Wires (P) Ltd. and the State Trading Corporation of India Ltd., respectively, against the judgment and order of the learned Single Judge of the Delhi High Court in Original Suit, being CS (OS) No.545/2012. The learned Single Judge rejected the plaint of the appellants herein under Order VII Rule 11 of the Code of Civil Procedure, 1908. Since these appeals are arising from same factual matrix and involve same questions of law and fact, they are being disposed of by this common judgment.

3. Briefly stated, the facts of the case are that M/s. Millenium Wires (P) Ltd. (hereinafter referred to as "Millenium Wires") and State Trading Corporation of India Limited (hereinafter referred to as "STC") entered into an Associateship Agreement (hereafter referred to as "the Agreement"), for importing continuous cast copper wire rods from Synergic Material Services PTE Limited, Singapore and Synergic Industrial Material Services, Malaysia (hereinafter referred to as "Synergic, Singapore" and

“Synergic, Malaysia” severally and collectively as the A
“Synergic Companies”). The STC opened 4 Letters of
Credit with the Allahabad Bank being Issuing Bank and the
Malayn Banking BHD, Malaysia being the Confirming Bank.

4. Under the said Agreement, STC was to import the B
said copper wire rods for Millenium Wires from the Synergic
Companies. The agreement stipulated that Millenium Wires
shall provide STC with margin money as advance of 25%
of the value of Letter of Credit to be opened by STC (clause C
4 of the Agreement) along with 25% cash advance and a
post dated cheque 102.5% of the value of consignment in
favour of STC along with an undertaking. The mode of
effecting the transaction between the Millenium Wires and D
STC on one hand and the Synergic Companies on other
hand, was this: Oral orders were placed by the Millenium
Wires on the two Synergic Companies and the latter sent
sales contract/proforma invoices to STC. The proforma
invoices were to be issued by Synergic, Singapore in favour
of STC, specifically mentioning Millenium Wire's name as E
“A/c- Millenium Wires Pvt. Ltd.”. On acceptance of the said
proforma invoice, final invoice was to be issued by the two
Synergic Companies, which on acceptance by Millenium
Wires was to be sent back to the Synergic Companies. This
would constitute the contract between STC/Millenium Wires F
on one side and the Synergic Companies on the other. At
this stage Letters of Credit were to be opened by STC
through Allahabad Bank payable to the Synergic
Companies through the Malayn Bank.

5. In pursuance to the Agreement, STC opened four G
Letters of Credit with the Allahabad Bank being:

A	L.C. No.	Opened On	Bill of Lading	Documents forwarded by Malayn Bank to Allahabad Bank	Response of the Allahabad Bank
B	0189111FLU000150	07/12/11	08/12/11	14/12/11	Accepted on 23/12/11
	0189111FLU000151	07/12/11	09/12/11	12/12/11	Rejected on 31/12/11
	0189111FLU000154	17/12/11	31/12/11	22/12/11	No information
C	0189111FLU000159	02/01/12	07/01/12	06/01/12	Accepted on 16/01/12

D With respect to all these Letters of Credit the Malayn Bank had released the payment to the Synergic Companies after the documents were presented by them. It was at this stage that the Millenium Wires and STC approached the Delhi High Court by filing a suit seeking permanent, mandatory and perpetual injunction against the Synergic Companies from claiming any benefit under the Letters of Credit in question and against the Confirming Foreign Bank being Malayn Bank to prevent any action or release of funds under the Letters of Credit.

F 6. The Malayn Bank filed an application under Order VII Rule 11 of the Code of Civil Procedure, 1908. The learned Single Judge of the Delhi High Court allowed the application thereby dismissing the plaint giving following reasons:

G (i) There were no specific allegation against the Malayn Bank except a statement that the Bank seems to be hand in glove with the Synergic Companies.

H (ii) As per UPC-600 (Uniform Customs and Practice for

Documentary Credits, Sixth Edition) published by A
International Chambers of Commerce, the Banks are
bound to release the payment in terms of the Letter
of Credit if the complying presentation is made by
the Beneficiary (in this case Synergic Companies). B
Further the learned Single Judge relied on
established principle that the Court shall not grant
injunction against the issuing bank or the confirming
bank except in two circumstances:

- a) There is fraud and the bank has knowledge of the C
fraud; or
- b) There would be irreparable injury caused to one of
the parties if the injunction is not granted.

The plaintiffs made specific allegations only against D
the Synergic Companies and no averment with
respect to the knowledge of such fraud to the
confirming bank was made. Rather, it has been
shown that there was no knowledge of fraud on the E
part of the Confirming Bank and it cleared the
payments to the Synergic Companies as per the
provisions of UPC-600.

- (iii) The learned Single Judge further pointed out that as F
per UPC-600 Clause 16, in case the issuing bank
refuses to honour the presentation of documents, it
has to give a notice of such refusal to the confirming
bank within 5 days of the presentation of the
documents. Here, the Allahabad Bank approved the G
presentation of documents made by the Malayn
Bank, Confirming Bank, for 2 of the four Letters of
Credit and refused only one and even this refusal
was communicated after 19 days, way beyond the

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A time period prescribed by Clause 16. Thus, the Malayn Bank was in its right as well as duty to have made the payment to the Synergic Companies as per the Letter of Credit and the UPC-600.

B (iv) The learned Single Judge also pointed out that the remedies sought in the plaint i.e. injunction against the Synergic Companies to claim any benefit under the Letters of Credit and against the Malayn Bank to advance any payment under Letters of Credit had already become infructuous as the Malayn Bank had made the payments to the Synergic Companies.

C (v) The learned Single Judge discussed the established law relating to the Letters of Credit in great detail. He stated that the Letter of Credit is independent of the underlying contract between the applicant and the beneficiary and Courts of law would not meddle with the dealings of the banks and grant injunction as a matter of course as it would affect the trustworthiness of these transactions and also the position of the banks in the market. Further, the Banks should not be asked to not comply with the Letter of Credit for some dispute between the parties.

F 7. On these grounds the learned Single Judge allowed the application under Order VII Rule 11 of the Code of Civil Procedure, 1908 and dismissed the plaint as showing no cause of action against the Malayn Bank, giving liberty to the Plaintiffs to pursue other appropriate remedies against the Synergic Companies. Against the order of the learned Single Judge, both the appellants filed separate appeals before the Division Bench of the High Court. The Division Bench also dismissed both the appeals on same grounds as that of the learned Single Judge.

8. The major contention of the appellants herein is that A
the High Court has committed grave error in dismissing the
suit under Order VII Rule 11 as it acted against the settled
principles of procedure with respect to application under
Order VII Rule 11. According to the appellants, in such an B
application, the Court ought to have looked into the
averments contained in the plaint only and it cannot look
into the written statement or any other evidence filed by the
Defendant. The Plaintiffs/appellants have, inter alia, relied
on Saleem Bhai v. State of Maharashtra, (2003) 1 SCC C
557, Popat Kotecha Property v. State Bank of India
Association, (2005) 7 SCC 510, and Sopan Sukhdeo Sable
v. Asst. Charity Commissioner, (2004) 3 SCC 137.

9. After having gone through the plaint filed by the D
Plaintiffs, we find that it is only twice that the plaintiffs have
alleged against the Malayn Bank in following words:

(At para 17)

"That it is also pertinent to mention herein that the E
Plaintiffs apprehend that the Defendant No. 4 Bank
(which is the Negotiating/Beneficiary Bank) is in active
collusion with the Defendant Nos. 3 & 4."

(At para 47)

"Further, as enumerated hereinabove, it is amply clear F
that the Defendant No. 2 has forged the shipping
documents to fraudulently demonstrate export in order
to surreptitiously negotiate with the beneficiary bank for
release of payments without actually ever dispatching G
the goods. The Negotiating Bank has also wrongly
negotiated with the Defendant No. 2 without correctly
verifying the documents, giving rise to suspicion, that
it is hands in glove with the Defendant No. 2." H

A 10. Nothing in the plaint except the above two extracts
even come close to being an allegation against the
Negotiating Banks. In the above two extracts, there is
expression of mere apprehension of the Plaintiffs that
Negotiating Banks were in active collusion with the Synergic
B Companies. No explanation or justification has been made
in the plaint as to how this active collusion came about or
what makes the plaintiff suspect so. It is true that in the
plaint not all the evidence with respect to allegations is to
be adduced however, a comprehensive narration of facts
C that constitute cause of action has to be given in the plaint.
It is plain and clear that no cause of action, whatsoever,
may be deduced against the Negotiating Bank from the
above two extracts which form part of the plaint.

D 11. Furthermore, both the learned Single judge and the
Division Bench have discussed the law relating to Letter of
Credit and UPC-600 in great detail. In view of that, the
following observation of the Court in *R.D. Harbottle*
(Mercantile) Ltd. v. National Westminster Bank, (1977) 3
E WLR 752, should suffice:

“Banks must be allowed to honour their guarantees
without interference except in clear cases of notice of
fraud to the bank. The merchants take risk which are
F not to be imposed on the banks. Such interference will
deter trust in international commerce.”

12. We would uphold and restate the law on injunction
against honouring Letter of Credit by a Bank as summed
G up by the learned Single Judge as follows:

- (1) The Court must be slow in granting an order of
injunction restraining the realisation of a bank
guarantee or Letter of Credit.

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- (2) There are two exceptions to the above rule. The first is that it must be clearly shown that a fraud of a grievous nature has been committed and to the notice of the Bank. The second is that injustice of the kind which would make it impossible for the guarantor to reimburse himself, or would result in irretrievable harm or injustice to one of the parties concerned, should have resulted. A B
- (3) It is not enough to allege fraud but there must be clear evidence both as to the fact of fraud as well as to the bank's knowledge of such fraud. C

13. It would suffice to say here that injunctions against the negotiating banks for making payments to the beneficiary must be given cautiously as constant judicial interference in the normal practices of market can have disastrous consequences as it affects the trustworthiness of the Indian banks and markets. D

14. Furthermore, it appears that the Malayan Bank had forwarded the documents presented by the Synergic Companies to the Allahabad Bank. Out of four Letters of Credit, Allahabad Bank had accepted the presentation of documents in two Letters of Credit with the consultation of the STC. Only one of the presentation was rejected while there is no information with respect to the response of the Allahabad Bank on presentation of documents of the fourth Letter of Credit. Even on the Letter of Credit for which the presentation was rejected, the response was made after 19 days while UPC-600 provides that rejection or any objection against the presentation must be communicated to the negotiating bank of the beneficiary within 5 days. E F G

15. In the circumstances as narrated above and in light of the settled law on the point of injunction against the H

A banks to honour their guarantees, we are of the view that these appeals are to be dismissed and accordingly appeals are dismissed.

16. Before we part with, it would be most appropriate
B for us to point out that the appellants can pursue their remedies against the Synergic Companies in appropriate forum by instituting appropriate proceedings, if so advised. However, we make it clear that the opinion expressed by us in this judgment shall not stand in the way of deciding
C such proceedings on merits.

Nidhi Jain

Appeals dismissed.