Present:
Mr. Justice Sheikh Abdul Awal
and
Mr. Justice Md. Rafizul Islam

In the Matter of:

First Appeal No. 178 of 2009

Janata Bank Ltd.
.......Defendant -Appellant.

-Versus-

M/S. Hoque Commercial Syndicate and others.
........Plaintiff -Respondents.

Mr. Md. Arif Billah with
Mr. Iftekhar Ahmed, Advocates
.... For the appellant.

Mr. Mehrab Hossain with

Ms. Rona Naharin, Advocates

……. For the Respondent No.8.

Heard on 18.05.2026, 20.05.2026, 07.06.2026, 08.06.2026, 14.06.2026, 23.07.2026 and Judgment on 03.08.2026.

Md. Rafizul Islam, J:

This First Appeal is directed against the impugned judgment and decree dated 18.02.2009 (decree signed on 25.02.2009) passed by the learned Joint District Judge, 1st Court, Narayangonj in Money Suit No.03 of 2004.

Facts, relevant for disposal of this Appeal, in brief are that, M/S Hoque Commercial Syndicate and 7 others as plaintiffs instituted Money Suit No.08 of 1994 which was subsequently renumbered as Money Suit No.03 of 2004 in the Joint District Judge, 1st Court, Narayangonj against Janata Bank Ltd. and 6 others as defendants for compensation amounting to Tk.27,14,28,735.33. The plaintiff No.1 to 7 are industrial/commercial establishments which are run under the management of plaintiff No.8. The plaintiff No.8 is a businessman, who runs his business through Bank account in Janata Bank in Tan Bazar Branch and B.B. Road Branch, Narayangonj since 1979 and there was a good relationship with the defendant No.2 Bank. The defendant No.2 provided banking assistance to the plaintiffs in their business. In the year of 1990 the defendant No.2 influenced the plaintiff No.8 to become guarantor of proforma defendant No.4-7 for importing cotton yarns for handloom Industry. Subsequently, the plaintiff No.8 started an export business and developed a relationship with defendant No.3 bank. In January 1991, the defendant No.2 informed him that imported goods was missed from Benapole Customs House. Then the defendant Bank filed Artha Rin Case Nos.44/92,50/92, 53/92, 54/92 against the plaintiff Nos.1 to 3 and defendant No.4 to 7 accusing the plaintiff No.8 as guarantor as well as defaulter. The plaintiffs could not continue their business with any other bank since the defendant bank started to non-cooperation with the plaintiffs' business and showed them as defaulter. The plaintiffs paid Tk.80,00,000/- to the defendant No.2 by instalment and continue the business with the defendant No.3 by opening 10 L/C and paid dues of 7 L/C in time and prayed for back to back L/C for the rest 2 L/C but the defendant No.3 delayed the approval by making up false, fabricated excuse for which the plaintiffs could not export the goods in time. The said suits were dismissed on contest against which the defendant Bank preferred Appeal before the High Court Division which were also dismissed. During pendency of those suits the defendant Bank refused to open back to back L/C in favour of the plaintiffs on 24.08.1991 and then by letter dated 05.11.1991 closed all business transaction with him showing defaulter and as a result he faced huge quantities of financial loss from his Garments business. The plaintiffs paid all dues according to the claim of defendant Bank and tried to run the business but failed due to non-co-operation of defendant Bank. The defendant Bank had obstructed the export of the plaintiffs's manufactured goods for which the plaintiffs could not export their manufactured goods in time. As a result the plaintiffs faced huge financial loss and the defendant Bank is responsible for it and that the plaintiffs are entitled to get the compensation and hence, the case.

The defendant No.1 to 3 contested the suit by filing written statement denying all the material allegations made in the plaint and stating iner-alia that the plaintiffs-respondents became defaulter and as such the guarantors and the business allies/syndicate became loan defaulter by law and therefore by providing credit facility with them were not permissible at all. The allegation of willful delay is not true and the defendant No.3 scrutinized every application separately on case to case basis. Since the plaintiff side became defaulter, the bank stopped banking with them and informed the plaintiff vide letter dated 05.11.1991. Hence the suit is liable to be dismissed.

The suit was tried by the learned Joint District Judge, 1st Court, Narayangonj. The plaintiff examined 1 witness and the defendant examined 2 witnesses and produced some documents to prove their respective cases. After conclusion of trial, the Trial Court, by his judgment and decree dated 18.02.2009 decreed the suit.

Being aggrieved by and dissatisfied with the impugned judgment and decree dated 18.02.2009 passed by the learned Joint District Judge, 1st Court, Narayangonj, the defendant No.2 filed this First Appeal before this Court.

Mr. Iftekher Ahmed, the learned Advocate appearing for the appellant submits that the learned trial court completely misdirected himself in law in holding that the bank is liable for refusing to extend credit facilities. He again submits that there was no specific contract requiring the Bank to open the back-to-back letter of credit. Mere expectation of obtaining financial accommodation does not create any enforceable legal right. He finally submits that the impugned judgment and decree on the basis of such whimsical, arbitrary and unlawful observation has deprived the appellant from getting justice and as such the impugned judgment and decree is liable to be set aside. He concludes that the appeal has merit and the same may kindly be allowed.

On the other hand Mr. Mehrab Hossain, the learned Advocate appearing for the respondent No.8 submits, it is on record that the defendant bank first assured the plaintiff that the letter of credit would be opened but subsequently refused the facilities and branded him a defaulter. Such arbitrary conduct actuated by malice and caused substantial financial loss to the plaintiff's garments business for which the compensation was awarded. He again submits that the trial court appropriately and lawfully passed the impugned judgment and decree. He concludes that the appeal has no merit and the same is liable to be dismissed.

We have considered the submissions of the learned Advocates for both the parties and examined the impugned judgment of the trial court and the materials on record available in the lower court's record.

The pivotal question is whether refusal by the defendant bank to extend back-to-back letter of credit gives rise to a claim for damages.

It appears from the record that the respondents-plaintiffs filed 2 applications to the defendant-appellant bank for opening back-to-back letter of credit and the defendant bank assured the plaintiffs for opening letter of credit but finally refused. As a result the plaintiffs suffered huge damages for not getting the money from the bank.

Therefore, the plaintiffs prayed for a decree of an amount of Tk. 27,14,28,735.33.

The plaintiff No.8 has deposed as P.W-1. He has stated in his Examination-in-Chief that "আমি ৭টি রপ্তানী L/C পাই। ৩নং বিবাদীর মাধ্যমে আমি রপ্তানী কাজ সম্পন্ন করি। এই ৭টি L/C র কাজ সম্পন্ন করা কালনী সময়ে International Buying House এর সঙ্গে Worth International ৬০১৪২১/- মার্কিন ডলারের Garments রপ্তানী করার জন্য ৩১৭০ Proforma invoice তারিখ ১২/০৭/১৯৯১ ইং তারিখ আমি প্রাপ্ত হই। এই চুক্তির অংশ হিসাবে আমি ৩টি রপ্তানি এল.সি পাই। ৮১২৯৯ রপ্তানী এল.সি নং ৩/৮/৯১, ৩০২১৬ মার্কিন ডলারে নং-৮১৩২০ এল.সি। ১৮/০৮/১৯৯১ মার্কিন ডলার ১৪,৩০৮৬/- =মার্কিন ডলার অন্য আর একটি এল.সি নং-৮১৪১৭, তারিখ-১১/০৯/১৯৯১, ৪২৮৮০/- মার্কিন ডলার এই ৩টি এল.সি পাই। এই ৩টি এল.সি মধ্যে ২টি এল.সি নং - ৮১৩২০, ১৮/০৮/১৯৯১ ইং ও ৮১৪১৮, তাং-১১/০৯/১৯৯১ এর দুইটা Back to Back L/C খুলার জন্য আবেদন করি। Back to Back L/C খুলার জন্য আবেদনের তারিখ ছিল ২৪/০৮/১৯৯১ ও ০২/১০/১৯৯১ ইং। L/C নং ৮১২৯৯, তারিখ ০৩/০৮/১৯৯১ ইং Back to Back খুলার আবেদন ব্যাংক কিছুই করে নাই। ব্যাংক আর কোন L/C খুলে নাই। তখন ৩ নং বিবাদী আমাকে জানায় যে, তাহাদের কিছু Technical অসুবিধার জন্য L/C খুলতে বিলম্ব হইবে। Back to Back L/C খুলার আশা দেয়। আমাকে ব্যাংক মার্কেট হইতে মালামাল কিনার কষ্ট দেয়। তখন আমি এল.সি নং ৮১৩২০ এর ১৮/০৮/১৯৯১ ইং তারিখ মার্কিন ডলারের সূতাসহ সমূদয় কাঁচামাল ক্রয় করি ও উৎপাদন করি এর পরও ব্যাংক L/C খুলতে তালবাহানা করে। ৩০/০৯/১৯৯১ইং তারিখে আমি ব্যাংকের নিকট একটি চিঠি দেই Back to Back L/C না খুললে ব্যাংক দায়ী থাকবে এই রকম একটি চিঠি দিয়াছিলাম।"

The plaintiff No.8 has submitted 2 applications which have been marked as exhibit No. 1/9 and 1/10 and the refusal letter issued by the defendant bank has been marked as exhibit No. 1/12.

The plaintiff's case is essentially founded upon the allegations that the bank assured him that back-to-back letter of credit would be opened but later refused and thereby caused loss in his garments business. Such a claim raises the question whether the Commercial Bank incurs liability in damages merely because it refuses to extend a credit facility. Opening of a letter of credit or back to back letter of credit is a credit facility and not a matter of right.

A back-to-back letter of credit is fundamentally a banking credit facility. No customer possesses an absolute legal rights to compel a bank to grant such facility. The decisions to extend credit depends upon commercial consideration including the customer's financial standing, existing liabilities, banking risk and internal banking policies. Unless a concluded agreement binding the bank to provide the facility is proved, refusal to sanction the same cannot amount to breach of contract. In the present case, the plaintiff has failed to establish violation of any statutory duty or any legal obligation imposed upon the appellant bank requiring it to issue the requested letter of credit. The plaintiff submits that the defendants with an illegal intention to recovery of the defaulter amount of proforma defendant No.4-7 from the present plaintiff as guarantor of the earlier Artha Rin Case No. 49, 50, 53 and 54 of 1992 for creating pressure upon the present plaintiff with vindictive attitude and malicious activities did harm of the garments business of the plaintiff by refusing to issue letter of credit to the plaintiff and then by closing all business transaction with him.

The allegation of malice equally does not advance the plaintiff's case. It is a settled principle that motive becomes irrelevant where the act itself is lawful. If the bank possessed the legal authority to refuse the requested facility, the allegation that such refusal was actuated by ill-will cannot by itself create liability in damages.

Moreover, the plaintiff claimed compensation amounting to Tk. 27,14.28,735.33 alleging loss of garments business. It appears that such claim is founded upon anticipated commercial profits. Damages of this nature must be proved with certainty by reliable documentary and oral evidence establishing a direct nexus between the alleged wrongful act and the actual losses sustained. The evidence on record falls far short of proving either the existence or quantum of such enormous loss.

On perusal of the impugned judgment of the learned trial court, it transpires that the assessment of compensation made by the trial court is based upon conjectures rather than legally admissible proof. The learned trial court has not mentioned damage or the loss specifically in his impugned judgment.

The learned trial court appears to have proceeded on the assumption that since the plaintiff suffered business loss following refusal of the banking facility, closing all business transaction with the plaintiff by showing him as defaulter and writing letters to other commercial banks to stop banking facility in favour of the plaintiff with vindictive attitude. The bank automatically became liable for compensation. Such approach is contrary to the settled principles governing contractual liability. In the absence of proof of an enforceable contractual obligation, breach of statutory duty no decree for compensation could legally be passed against the appellant-defendant bank.

Accordingly, the appeal succeeds and the same should be allowed.

In the result, the appeal is allowed without any order as to costs. The impugned judgment and decree dated 18.02.2009 (decree signed on 25.02.2009) passed by the learned Joint District Judge, 1st Court, Narayangonj in Money Suit No.03 of 2004 is hereby set aside and the above mentioned suit being Money Suit No.03 of 2004 is hereby dismissed.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 58 (F) of 2010 is also disposed of.

The order of stay granted earlier by this Court stands vacated.

Communicate this judgment and order along with the lower court's record at once.

Sheikh Abdul Awal, J:

I agree.

A.Aziz, B.O.