

**IN THE SUPREME COURT OF BANGLADESH  
HIGH COURT DIVISION  
(Civil Appellate Jurisdiction)**

**First Miscellaneous Appeal No. 242 of 2021  
With  
(Civil Rule No. 202 (FM) of 2021)**

**In the matter of:**

Meejab Limited represented by its Managing  
Director

—Plaintiff-Appellant

-Versus-

AA Knitspin Limited represented by its  
Managing Director and others

—Defendants-Respondents

Mr. Md. Imam Hossain, with  
Mr. Mirza Al Mahmood, Advocates  
... For the Plaintiff-Appellant

Mr. J. K. Paul, Advocate  
... For Defendant No.2-Respondent No.2

Mr. Sovan Mahmud, Advocate  
...For the Respondent No.3

Mr. A. Al Masud Begh, Advocate  
... For the Defendant-Respondent Nos. 10 and 11

Mr. K.S. Salah Uddin Ahmed, Advocate  
...For the Pro-forma Defendant- Respondent No. 16

**Heard and Judgment on 16.07.2024**

**Present:**

Mr. Justice Syed Refaat Ahmed

And

Mr. Justice Md. Mozibur Rahman Miah

And

Mr. Justice Md. Bashir Ullah

**Md. Mozibur Rahman Miah, J:**

The instant appeal and that of the rule have been referred to this bench by the Appellate Division by its order dated 16.05.2024 for disposal.

Since the point of law and facts so figured in the appeal and the Rule are intertwined, they have been heard together and are disposed of by this single judgment.

At the instance of the plaintiff in Title Suit No. 127 of 2021, this appeal is directed against the judgment and order dated 09.02.2021 passed by the learned Joint District Judge, First Court, Dhaka, rejecting an application filed by the plaintiff-appellant under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure.

The salient facts leading to preferring this appeal are:

The appellant as plaintiff originally filed a suit being Title Suit No. 127 of 2021 in the First Court of Joint District Judge, Dhaka seeking reliefs, amongst others, for declaration that the plaintiff through the defendant nos. 10-11 is not bound to make payment to the defendant nos. 1-5 against the Back-to-Back Letters of Credit (briefly, BTB LC).

The case of the plaintiff narrated in the plaint of the suit is succinctly that, it is a Private Limited Company engaged in the business of export of readymade garments to different countries. On the other hand, the defendant No. 7, namely, the UK Textile Group Limited is a company incorporated in the United Kingdom (UK) and defendant no. 6, Tex Valley International happens to be its local agent. The plaintiff used

to maintain all business communication and correspondence with defendant no. 7 through defendant no. 6. In course of such business, a sale contract was executed between defendant no. 7, defendant no. 6 and the plaintiff on 02.06.2020. Thereafter, several sale contracts dated 16.06.2020, 22.06.2020, 09.09.2020, 21.09.2020 and 13.01.2020 were also executed between them for exporting readymade garments to defendant no. 7 worth USD 8,73,563.00 equivalent to Taka 7,42,52,855/-.

In order to manufacture the readymade garments, the plaintiff needed huge raw materials which is why the defendant no. 6, the local agent of defendant no. 7, then asked the plaintiff to purchase the raw materials only from defendant nos. 1-5 and to open required BTB LCs in their favour, although the plaintiff had no direct communication with them. The plaintiff then on good faith asked defendant no. 11 bank to open BTB LCs in favour of the defendant nos. 1-5 and accordingly the defendant no. 11 opened several BTB LCs in their favour for supply of different raw materials (goods). However, the defendant nos. 1-5 by adopting fraud and in connivance with the defendant nos. 6-7 without delivering the goods as per agreed terms and conditions so laid out in the LCs obtained acceptance from the plaintiff on the delivery *chalans* submitted by the defendant nos. 1-5 against the said BTB LCs. Meantime, defendant no. 11 made payment for an amount of USD 32,500.00 to defendant no. 3 in respect of BTB LC No. 1069200400286 dated 30.08.2020 even though the plaintiff did not receive any goods against that LC resulting in the defendant no. 6 making delayed

shipment to the defendant no. 7 against the sale contract entered into with the plaintiff.

In the aforesaid manner, the defendant nos. 1-7 defrauded the plaintiff, under which circumstances, the plaintiff requested defendant nos. 10-11 to stop all further payments to the defendant nos. 1-5 against the BTB LCs issuing several letters and eventually being constrained to file the suit.

On the date of filing the suit, the plaintiff also filed an application under Order XXXIX, Rules 1 and 2 of the Code of Civil Procedure for temporary injunction mostly describing similar facts made in the plaint and prayed for restraining the defendant nos. 10-11 from making payment against BTB LCs opened in favour of the defendant nos. 1-5. The learned Judge of the trial court took up the said application for hearing and rejected the same by order dated 09.02.2021 against which the instant appeal has been preferred by the plaintiff as appellant.

At the time of admission of the appeal, the appellant as petitioner then filed an application for injunction stating similar facts to what had been asserted in the trial court and a Division Bench of this court upon considering the same issued rule on 14.03.2021 and restrained the respondent-opposite-party nos. 10-11 from making further payments to the defendant-respondent-opposite-party nos. 1-5 against the BTB LCs opened in their favour for a period of 8(eight) weeks. The said restraint order was lastly extended on 30.09.2021 for another 6(six) months and the above order thus gave rise to above Civil Rule No. 202(FM) of 2021.

After that, the respondent-opposite-party no. 2 filed an application for dismissing the appeal and that of discharging the rule. The said application was ultimately taken up for hearing and upon hearing the parties to the rule, a Division Bench of this court vide judgment and order dated 20.02.2022 discharged the rule only against the opposite-party no. 2 resultantly allowing the respondent-opposite-party nos. 10-11 to make payment in favour of the opposite-party no. 2 against BTB LC No. 1069200400274 issued on 29.06.2020. However, against the said order, the appellant unsuccessfully travelled to the Appellate Division by filing a civil petition for leave to appeal no. 1805 of 2022 resulting in a “no order” from the Appellate Division on 25.07.2022.

Against the above backdrop, both the appeal and rule were taken up for hearing by a Division Bench of this court and after hearing the parties vide judgment and order dated 12.12.2023 allowed the appeal and disposed of the rule directing to maintain order of injunction passed at the time of issuance of the rule till hearing of the substantive application for injunction by the trial court.

However, that order was challenged by the respondent-opposite-party no. 2 before the Appellate Division by filing a civil petition for leave to appeal no. 1506 of 2024. The said appeal was ultimately taken up for hearing and vide judgment and order dated 16.05.2024, it disposed of the appeal through setting aside the order passed by the Division Bench both in First Miscellaneous Appeal and Rule dated 12.12.2023 and referred them by constituting this larger bench for hearing and disposal afresh on merit.

Mr. Md. Imam Hossain with Mr. Mirza Al Mahmood, the learned counsels appearing for the appellant-petitioner upon taking us to the memorandum of appeal and that of the application for injunction including the documents appended therewith at the outset submits that, the defendant no. 6 directed the plaintiff to purchase the raw materials from defendant nos. 1-5 and respective pro forma invoices of the defendant nos. 1-5 were accordingly sent to the plaintiff through the defendant no. 6 which instructed the plaintiff to open BTB LCs in their favour and assured that the raw materials to be supplied would be of international standard and of premium quality and delivered in accordance with the invoices. Yet, the defendant nos. 1-5 by practicing fraud did not deliver the raw materials as per terms and conditions so embodied in the respective LCs.

The learned counsel further argues that the LCs were opened for supplying 'fabrics' but the defendant nos. 1-5 supplied 'yarn' instead which is tantamount to practicing fraud upon the plaintiff-appellant and despite having clear elements of fraud in the entire business transaction the learned Joint District Judge has erroneously rejected the application for injunction by misappreciating the facts and thereby erred in passing the impugned order.

Mr. Hossain also submits that all BTB LCs have been issued in favour of the defendants-respondent nos. 1-5 who being the local suppliers operate their business within the territory of this country so the status of the BTB LCs was not international in nature and, therefore, the decisions as have been reported in 55 DLR (AD) 56, 57 DLR (AD) 194

and 54 DLR (AD) 70 and as otherwise cited by the defendants-respondent are not applicable in the facts of the instant case. With such submissions, the learned counsel finally prays for allowing the appeal on setting aside the impugned order and make the Rule absolute.

*Per contra*, Mr. Sovan Mahmud, the learned counsel appearing for the respondent-opposite-party no. 3 by taking us to the supplementary-affidavit and the various documents annexed with the application for injunction so filed by the appellant at the very onset contends that, M/S J. K. Synthetic Mills Limited (respondent no. 3) issued three pro forma invoices in favour of the plaintiff-appellant and it opened BTB LCs thereagainst accordingly and in compliance with the terms and conditions laid out in the BTB LCs the respondent no. 3 supplied the raw materials as asked for to the plaintiff within the very validity period of the respective LCs leaving no scope to halt payment to this respondent against the LCs.

The learned counsel by referring to the Delivery Challans, Truck Receipts, Commercial Invoices, Packing lists, Certificates of Origin, Beneficiary Certificates {Annexure- A, A(I), A(II), A(III), A(IV), A(V), A(VI), A(VII), B, B(I), B(II), B(III), B(IV), B(V), B(VI), B(VII) and B(VIII)} annexed by the respondent no. 2 with the application for dismissing the appeal also submits that all those documents clearly depict that the plaintiff had duly received the goods supplied by the respondent no. 3 and neither the plaintiff nor the pro forma defendants ever raised any objection or found discrepancies either in regard to the goods supplied or of the shipping documents and, hence, the plaintiff-

appellant is not entitled to any ad interim order from any court of law and as such, the appeal is liable to be dismissed and the rule discharged.

The learned counsel goes on to submit further that in the pro forma invoices H.S. Code was mentioned as 5203.00.00 indicating that, the materials are Cotton, Carded or Combed though after opening the BTB LCs the plaintiff-appellant on 08.07.2020, 16.07.2020 and 14.10.2020 requested the respondent to supply cotton yarn to the designated address (which is evident from Annexure-X and X-1 series appended with the supplementary-affidavit dated 29.08.2023) and upon receipt of the letters the defendant-respondent no. 3 then supplied the cotton yarn under H.S. Code No.5203.00.00 having no scope for the appellant to say that the respondent no. 3 committed fraud by not supplying the goods as per BTB LC.

The learned counsel next submits that upon receipt of the raw materials supplied by the respondent no. 3 the plaintiff-appellant manufactured finished goods and exported them to the respondent no. 7 under agreement nos. AW20/TX/TPL010 dated 13.01.2021 for US\$ 122,475.00 and AW20/TX/TPL011 dated 13.01.2021 for US\$ 122,475.00 which is evident from Annexure-IV-1 to the application for acceptance of additional evidence filed by the plaintiff-appellant dated 13.08.2023 and since the plaintiff-appellant received the goods from this respondent without raising any objection and manufactured finished products by utilizing the same and ultimately exported the end products to the ultimate buyer, the defendant-respondent no. 7, so the plaintiff's bank, that is respondent no. 11, is bound to make payment in favour of



this respondent having no scope to restrain it by any order from a court of law.

The learned counsel Mr. Mahmud by taking us to the application for vacating the order of *status quo* so filed by it, also asserts that it supplied the yarn as agreed by the plaintiff-appellant who received the goods without raising any objection as to the said goods being contrary to the description embodied in BTB LC. But long after receipt of the goods and manufacturing the finished products as also exported to the respondent no. 7, the plaintiff with an ill-motive and for illegal gain purposely filed the suit as also the application for injunction only to deprive this respondent no. 3 from receiving payment from the defendant no. 11.

In support of his submission, the learned counsel has placed his reliance on the decisions in *Gooryonly (BD) Textile Ltd.-Vs-Chartkar Information Holding Ltd. And others* reported in 54 DLR (AD) 70, *Zyta Garments Ltd-Vs-Union Bank Ltd and others* reported in 55 DLR (AD) 56 and *National Credit and Commerce Bank Limited-Vs-Prime Bank Limited and others* reported in 8 BLC (HCD) 391.

On the other hand, Mr. J. K. Paul, learned counsel appearing for the respondent no. 2 by simply echoing the assertions made by the learned counsel for the respondent no. 3 submits that under the terms and conditions provided in BTB LC, the LC opening bank, respondent no. 11 is obligated to make payment to its counterpart, and since there is no discrepancy in the documents so submitted by the respondent nos. 1-5 to respondent no. 11 hence, the LC issuing bank, respondent no. 11 has no

other alternative but to make payment to the respondent nos. 1-5 including this respondent no. 2.

To supplement the said submission, the learned counsel Mr. Paul further adds that payment on LC cannot be stopped by any LC issuing bank as the LC is a separate contract executed between a buyer and supplier where the bank is not any party to it. Furthermore, the allegation of fraud as alleged by the plaintiff-appellant cannot be decided either in the appeal or in the rule which is subject to evidence and can only be adjudicated at trial and, therefore, the court below has not committed any wrong by rejecting the application for injunction and the appeal is thus liable to be dismissed. Mr. Paul in support of his contention refers to the cases of *Zyta Garments Ltd-Vs-Union Bank Ltd and others* reported in 55 DLR (AD) 56 and *Gooryonly (BD) Textile Ltd.-Vs-Chartkar Information Holding Ltd and others* reported in 54 DLR (AD) 70 and finally prays for dismissing the appeal.

We have considered the submission so advanced by the learned counsels for both sides, perused the memorandum of appeal, application for injunction, impugned order, supplementary-affidavit, counter-affidavit, application for dismissing the appeal and of discharging the Rule and other materials available on record.

On careful perusal of the plaint and that of the application for injunction filed by the appellant as plaintiff, both dated 08.02.2021, we find that there is no averment therein as to how the defendant-respondent nos. 1-5 defrauded the plaintiff in supplying goods by utilizing respective BTB LCs. In the memorandum of appeal and that of the

application for injunction as well filed on 22.02.2021 before this Court, the appellant even did not assert how the respondent-opposite-party nos. 1-5 defrauded the appellant-petitioner. Even in the supplementary-affidavit filed on 06.02.2022, the appellant also could not show how fraud was committed upon it. Then on 13.08.2023 the appellant filed an application for acceptance of additional evidence where for the first time it claimed that BTB LCs were opened for supplying fabrics by the respondent nos. 1-5 for manufacturing 100% export-oriented readymade garments though the respondent nos. 1-5 supplied goods which is 100% cotton knit yarn and, thereby, violated the description of goods as laid out in the LCs and as a result the appellant could not use fabrics supposed to be supplied by these respondents for manufacturing readymade garments and failed to supply the same to its buyer, the respondent no. 7, in time. However, we find from the application for acceptance of additional evidence filed by the appellant (as appears at page 5-6 thereof) that out of eight LCs, LC No. 1069200400431 was issued in favour of defendant-respondent no. 4 and LC Nos.1069200400392 and 1069200400302 was issued in favour of defendant-respondent no. 5 for supplying accessories for manufacturing readymade garments and the defendant-respondent nos. 4-5 supplied the same as specified in the respective LCs. Given these circumstances, it is totally incomprehensible to us how fraud has been practiced upon the appellant, thereby, leading us to conclude that there is no earthly reason to stop payments against the said LCs to the respective suppliers.

It is an admitted position as asserted in the plaint that the respondent no. 11 has already made payment of US\$ 32,500 to the defendant-respondent no. 3 against LC No. 1069200400286, so here also we find no case of fraud and find no scope to restrain respondent no. 11 by way of injunction from making payment to any of the respondent nos. 1-5 including the respondent no. 3.

Further, it appears from the application for injunction filed before this Court by the appellant that, LC No. 1069200400248 was opened in favour of respondent no. 1, but in the application filed for acceptance of additional evidence no specific allegation has been made by the appellant against the said respondent in regard to fraud in supplying goods against that LC.

So the above factum clearly exemplifies that fraud as alleged by the appellant is nothing but an ill-attempt to make out a third case as an afterthought. Even then, such half-baked allegation can never hinder the receipt of payment by the respondent no. 3 against any LC and in this regard we find clear support from the decision so referred by the learned counsel for the respondent no. 3 reported in 8 BLC (HCD) 391 where in paragraph no. 54 it has been expounded as under:

*“Plea of fraud had not been adopted by petitioner bank at the time of acceptance of letters of credit. Petitioner bank slept and slept and woke up at a very late stage. Petitioner bank could avoid loss if it would have been vigilant in examining documents cannot turn back and decline to reimburse payment*

*given to beneficiary opposite party company by opposite party bank on the plea of fraud. It is observed that relief by way of injunction is available to that litigant who is prompt and vigilant and not to him who is indolent and sleeps and sleeps over his right. Petitioner bank slept and slept and then lately rose seeking relief in bringing forth complaint of fraud. It was too late in the day to wake up and rise in ventilating grievances as to genuineness of credit documents.”*

In the same cited decision, this court by reference to the decision reported in 49 DLR 260=1 MLR 168 also held that:

*“It is thus crystal clear that no prohibitive order can be passed by courts to interfere with the normal banking transaction and also the contractual obligation of the bank when the only dispute is as to the performance of contract and that dispute can be resolved by bringing an appropriate action for damages. We have already found that the appellant have failed to substantiate their allegation of fraud. They have also failed to bring their case within the ambit of **“very exceptional”** circumstances that warrant an order of injunction. We, therefore, hold that the appellant have failed to make out a prima facie case in support of their prayer for injunction.”*

Above all, from the *ratio* so settled in the decisions, the core submission of the appellant-petitioner that fraud has been committed on the plaintiff-appellants explicitly falls through.

Now let us revert to the pivotal issue. As it is now a well-settled principle, and as fortified by our Appellate Division, that under no circumstances an LC issuing bank can be restrained or withheld in making payment to a supplier/exporter even if fraud has been alleged by any buyer/importer and the bank has been put on notice about such fraud. In the penultimate observation and discussion we explicitly found that no case of fraud has been established by the appellant and the bank is not abreast with the alleged fraud either. In such a situation, we can profitably rely on the legal proposition settled in the decision reported in 33 DLR (AD) 298 where it has been expounded as under:

*“Contract in mercantile transaction. Buyer purchasing goods from seller of another country undertaking through his bank to pay for the goods supplied through a bank in the seller’s country. The contract to pay to the seller is absolutely obligatory. No direction upon the bank to with-hold payment can be passed- Only exception is in case of fraud of which the bank has notice.”*

It is the submission of the learned counsel for the appellant that since the defendant-respondent nos. 1-5 are all local suppliers in whose favours the BTB LCs were opened, so the settled proposition as laid down by our Appellate Division for international LCs will not be

applicable here. But we are not at one with such submission so advanced by the learned counsel for the appellant. Rather, we profitably place our reliance on the decision in ***Standard Bank Ltd.-Vs-Tripos Engineering and Trading Company and others, Amitex Knitting and Dying and others*** reported in 9 MLR (AD) 309 where their Lordships held that:

*“Under International Credit Operation and International Banking transaction issuing bank is bound to make payment under back to back L/C on production of papers which on the face appear to be correct and the court cannot issue injunction restraining such payment since the bank has nothing to do with the delivery of goods in between the parties.*

*In the premises aforesaid and in the facts and circumstances of the case that the petitioner bank did not oppose the application for temporary injunction against payment under the letter of credit or took any step for vacating the order of status quo or ever challenged the same, instead paid the bulk of the amount under the letter of credit and thereafter only in July, 2002 raising the plea before the High Court Division that on enquiry by its officials revealed non-existence of the beneficiary of the letter of credits when bulk of the proceed is*

*already paid, the issuing bank has got no right to withhold the payment notwithstanding the fact that the payment was not complete.”*

There is no gainsaying the fact that transactions in international business and service are regulated either through sale contracts or letters of credit under different guidelines of Uniform Customs and Practice for Documentary Credits, 1983 (UCP 400, now UCP-600). In such a mercantile transaction, the LC issuing bank and negotiating bank essentially deal in documents not in goods no matter they are local LC or international LC. So whatever claim might be there for the appellant in regard to quality or quantity of goods has nothing to do with the payment of LC value to its supplier/exporter. Since the appellant has miserably failed to pinpoint any discrepancy in regard to shipping documents submitted by the respondent nos. 1-5 through their respective negotiating banks and given that the LC issuing bank has not raised any issue to that effect, rather partial payment was found to have been made to some of the defendant-respondent nos. 1-5, so there is no earthly reason to halt payment to any of the defendant-respondent nos. 1-5. In this connection, the decision in the case of *Zyta Garments Ltd.-Vs-Union Bank Ltd and another* reported in 55 DLR (AD) 56 is very much pertinent where their Lordships of the Appellate Division held that:

*“From the above discussion, we come to the conclusion that, with the establishment of a letter of credit a contract is created between the issuing bank and the negotiating bank without creating any right*



*to a stranger. The letter of credit is an independent contract and not qualified by the original contract of sale though it is based on it. It is also not affected by any dispute between the buyer and the seller. The court will not allow interference by outsiders with the letter of credit as it is bound to have serious repercussions on the international trade of a country.”*

In line with the above *ratio* a similar view was taken by this court in the case of ***Korea Exchange Bank, Seoul, Korea-Vs-Gemini Garments Limited and others*** reported in 56 DLR 392 which is as under:

***“Letter of Credit***

***Uniform Customs and Practice for Documentary Credits, 1983 (UCP 400) Articles 3 & 4***

*It is the blood of international commerce –The lifeline in international trade and commerce –It operates to secure the payment to the seller for the price of the goods sold. It also protects the corresponding interest of the buyer and the paying bank.*

*The letter of credit issued must be independent or autonomous of the underlying contract of sale of goods or service and the bank concerned with such credit are to deal in documents and not in goods.*

*An irrevocable letter of credit constitutes a definite under taking of the issuing bank, which it must honour and pay according to the terms and conditions of the credit.”*

During the course of hearing, we posed a question to Mr. Imam, the learned counsel for the appellant-petitioner, with regard to these settled propositions about not preventing the supplier/exporter from receiving payment in any business transaction originated through LC, thereby, denying any justification for passing any restraint order by any court of law. Mr. Imam in response very candidly acceded to that settled law passed by our Appellate Division which meets its legal limits only in the case of fraud. However, fraud as claimed to have been committed upon the appellant has not been satisfactorily established in the facts and circumstances and we have rejected such claim above. In this regard, we can also profitably rely on the decision to that effect in the case of ***Smart Apparels (Pvt.) Ltd.-Vs- Hanvit Bank Kuni Bong Branch and others*** reported in 57 DLR (AD) 194 where it has been propounded as under:

*“It is now the settled principle of law that no Court can pass any restraining order on any issuing bank from making payment under letter of credit.”*

Last but essentially not the least, we have very meticulously gone through the impugned judgment and order dated 09.02.2021 passed in Title Suit No. 127 of 2021. Though the said order is found to be very scanty recording as no discussion on settled principles of law and settled legal proposition, on the efficacy of the LC, yet the learned Judge has

perfectly rejected the application for injunction upholding the legal principle followed in case of passing any prohibitory order on the payment under LCs and, thereby, the decision of the court below is found to have not occasioned any failure of justice.

In that regard, we also can rely on the decision in the case of *Abdul Motaleb-Vs-Md. Ershad Ali and others* reported in 18 BLD (AD) 121 where it has been held that:

*“Simply because the impugned order was not a speaking order, could not by itself be a valid ground for interference by the High Court Division unless it can be shown that the subordinate Court has committed any error of law “resulting in an error in the decision occasioning failure of justice.”*

*The order of the subordinate Court may have been a bad order and improper one not having given any reasons but before interfering with the same the High Court Division is required to examine whether the same has resulted in an erroneous decision occasioning failure of justice”.*

Given the above discussion and observations, we are of the considered view that the learned Judge of the trial court has committed no illegality in rejecting the application for injunction brought by the

plaintiff-appellant which thus merits no reason to be heard afresh by the trial court.

Resultantly, the appeal is dismissed however without any order as to cost.

Since the appeal is dismissed, the connected rule being Civil Rule No. 202 (FM) of 2021 is thus discharged.

The order of injunction granted at the time of issuance of the Rule stands recalled and vacated.

Let a copy of this judgment be sent to the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka forthwith.

**Syed Refaat Ahmed, J.**

I agree.

**Md. Bashir Ullah, J.**

I agree.