

IN THE SUPREME COURT OF BANGLADESH
HIGH COURT DIVISION
(CIVIL REVISIONAL JURISDICTION)

Present:

Ms. Justice Kazi Zinat Hoque

Civil Revision No. 309 of 2023

M/S. Rubeda Trading

.....Petitioner

-Versus-

U M Cables limited, represented by its CEO
and CFO 1/1/3, Chainchpada, Silvassa-
396230 (U.T.OF D. & N.H. and Daman &
DIU, India and others.

.....Opposite Parties.

Mr. Md. Ziaul Haque, Advocate

.....For the petitioner

Mr. Tanjib-Ul-Alam, Senior Advocate with

Mr. Kazi Ershadul Alam and

Ms. Nazmun Binte Islam, Advocates

..... For opposite party No.1

**Heard on:20.08.2024, 25.08.2024,
29.08.2024 and 01.09.2024.**

Judgment on: 05.09.2024.

Kazi Zinat Hoque, J:

This Civil Revision is directed against the judgment and order
dated 27.09.2022 passed by the learned District Judge, Dhaka
in Miscellaneous Appeal No.220 of 2022.

The petitioner, a proprietorship concern of Ms. Lovely Chowdhury alias Lovely Ahsan, filed Title Suit No.364 of 2022 before the learned Joint District Judge, 5th Court, Dhaka for declaration, permanent injunction and compensation contending, inter-alia, that the plaintiff opened Letter of Credit No.89222010152 dated 07.04.2022 for importing 1800 KMs of Optical Fiber Cables (unarmoured with 2FRP) from India, but defendant No.1 delivered goods of inferior quality to the plaintiff. As such the plaintiff filed this suit for declaration, permanent injunction and compensation against defendant No.1. The value of L.C is USD 1,54,830.00. The plaintiff claims compensation for an amount of Tk.2,68,58,636.00/-. The plaintiff's application for temporary injunction was rejected by the trial court.

Being aggrieved by and dissatisfied with the order of the trial court dated 17.08.2022 the plaintiff preferred Miscellaneous Appeal No.220 of 2022 before the Court of learned District Judge. Vide order No.2 dated 27.09.2022 the court of appeal below dismissed the appeal. Being aggrieved by and

dissatisfied with the judgment of the court of appeal below the plaintiff-appellant preferred this Civil Revision.

Mr. Md. Ziaul Haque, learned Advocate appearing for the petitioner, argued that trial court most illegally rejected the application for temporary injunction holding that letter of credit is independent and separate from the underlying contract of sale and if payment under letter of credit is stopped by way of injunction it will have a negative impact on international trade. He further argued that the court of appeal below dismissed the appeal on the same ground. Both the courts below failed to consider that since the plaintiff raised allegation of fraud the courts ought to have granted temporary injunction and as such there was error of law resulting in an error in the decision occasioning failure of justice.

Mr. Tanjib-Ul-Alam, Senior Advocate, along with Mr. Kazi Ershadul Alam and Ms. Nazmus Binte Islam, argued that an L/C is independent of the underlying contract under Article 4 of UCP 600. He emphasized that banks must honour payments under letter of credit if the beneficiary presents

conforming documents, regardless of disputes between the applicant and beneficiary. He further argued that the plaintiff's suit was for compensation due to breach of contract and thus did not justify an injunction. He contended that stopping payment due to fraud allegations would undermine international trade and that vendors rely on L/C autonomy for secure transactions. He further argued that the plaintiff could not show any discrepancy in the documents. As such the courts below rightly refused to grant injunction. He prayed for discharging the Rule.

AUTONOMY OF LETTER OF CREDIT

It is now well established principle that letter of credit is independent and autonomous of the underlying contract of sale of goods or service. This principle is reflected in Article 4 of the Uniform Custom and Practice (UCP 600) which is reproduced below :

Uniform Custom and Practice (UCP 600)

Article 4 Credits v. Contracts

- a. A credit by its nature is a separate transaction from the sale or other contract on which it may be based. Banks

are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit. Consequently, the undertaking of a bank to honour, to negotiate or to fulfill any other obligation under the credit is not subject to claims or defences by the applicant resulting from its relationships with the issuing bank or the beneficiary.

A beneficiary can in no case avail itself of the contractual relationships existing between banks or between the applicant and the issuing bank.

b. An issuing bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like.

United Kingdom

The principle of autonomy of letters of credit is a recognized principle in the United Kingdom. “(T) he opening of confirmed letter of credit constitutes a bargain between the banker and the vendor of the goods, which imposes upon the banker an absolute obligation of pay, irrespective of any dispute there may be between the parties as to whether the goods are up to the contract or not. An elaborate commercial

system has been built upon the footing that bankers confirmed credits are of that character, and, in my judgment, it would be wrong for this Court in the present case to interfere with that established practice.”¹

India

The Courts in India recognize the autonomy of letter of credit.

In the case of Tarapore & Co. and Ors. vs. V/S

Tractoroexport and Ors² the Supreme Court of India held :

“An irrevocable letter of credit has a definite implication. It is a mechanism of great importance in international trade. Any interference with that mechanism is bound to have serious repercussions on the international trade of this country. Except under very exceptional circumstances, the Courts should not interfere with that mechanism.”

Pakistan

Similarly in Pakistan the Courts also recognize the independence of letters of credits. In the case of Wartsila

¹ Hamzah Malos and Bochir Hamzeh Maios vs. British Imex Industries Limited, [1958] 2Q.B.127

² MANU/SC/0215/196

Pakistan (Pvt) Ltd. vs Standard Chartered Bank (Pakistan) Limited³ the Sindh High Court held :

“After considering the above case law, this Court is of the view that in transactions where Letters of Credits have been issued as a Banking instrument between the parties for any reason, the Court must restrain itself from interfering in its honoring. It is an international practice amongst and between the Banks and is perhaps the safest mode of transaction for selling and buying goods or services. The Letter of Credits world over are governed, interpreted and acted upon on Uniform Custom and Practice for Documentary Credits (“UCP”), which has been initiated by the International Chamber of Commerce and is easily the most effective in the annals of privately drafted rules for trade. The prevailing edition is commonly known as UCP 600. As per Article 1 of UCP 600 these Rules apply to any documentary credit, (including to the extent to which they may be applicable, any standby Letter of Credit) when the text of the Credit expressly indicate that it is

³ Suit No.2349 of 2018

subject to these Rules. It further provides that they are binding on the all parties thereto unless modified or excluded by the Credit. Article 4 provides that Banks are in no way concerned with or bound by such contract, even if any reference whatsoever to it is included in the credit, whereas, the undertaking of the Bank to honor and negotiate is not subject to claims or defences by the applicant and the issuing Bank should discourage any attempt by the applicant to include, as an integral part of the credit, copies of the underlying contract, proforma invoice and the like. Article 5 thereof provides that Banks deal with documents and not with goods, services or performance to which the documents may relate. Insofar as the instrument in hand i.e. the Standby Letter of Credit as agreed upon between the parties is concerned it clearly provides that this Letter of Credit is subject to UCP-ICC Publication No.600 and is to be governed / construed with Pakistani Law and subject to the jurisdiction of Pakistani Court. Hence, the argument that this is at most a Standby Letter of Credit and is to be governed separately and

distinctly is misconceived and is not borne out from the record placed before the Court.”

Bangladesh

Similarly the Courts in Bangladesh also recognize the independence of letter of credit. In the case of Gooryonly (BD) Textile Ltd. Vs. Chartkar Information Holding Ltd and others [54 DLR (AD) (2002)70] the Appellate Division held :

“Thus a letter of credit is independent and unqualified by the contract of sale or underlying transaction and the autonomy of the same is required to be protected. The authorising or negotiating Bank is bound to pay when all papers as per terms and condition of the letter of credit are presented which appears to the issuing Bank to be correct on the face of it and, as such, under the International Credit operation and International Banking transaction Banks are in no way concerned or bound by the selling contract of the parties even if reference to such contract is made in credits, for Bank in such credit operation deals in documents and not with the quality/quantity of goods shipped or deal with

other performance of the seller to which the document may be related.”

EXCEPTION TO THE ATONOMY OF LETTER OF CREDIT

United Kingdom

Although the Courts in the United Kingdom uphold the principle of autonomy of letters of credit, they also recognize the exception to the rule. “The bank ought not to pay under the credit if it knows that the documents are forged or that the request for payment is made fraudulently in circumstances when there is no right of payment.”⁴

In the case of Harbottle (RD) (Mercantile) Ltd v National Westminster Bank Ltd⁵ it was held :

“It is only in exceptional cases that the courts will interfere with the machinery of irrevocable obligations assumed by banks. They are the lifeblood of international commerce. Such obligations are regarded as collateral to the underlying rights and obligations

⁴ Edward Owen Engineering Limited vs. Barclays Bank International Limited and Umma Bank, [1978] QB 159

⁵ [1978] QB 146

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 [...] Otherwise, trust in international commerce could be irreparably damaged”

Bangladesh

The Courts in Bangladesh recognize the fraud exception to the autonomy rule, but are reluctant to interfere by granting order of injunction. In Uttara Bank case [33 DLR (AD) (1981) 298] the Appellate Division of the Supreme Court of Bangladesh held:

“Applying these principles the least that can be said is that the decisions show that the courts are very reluctant to interfere with commercial transactions which have been entered into by the parties in business transactions through performance of guarantee or letter of guarantee which are invoked in the commercial dealings. The decisions show that court will not interfere by granting

an injunction from performing or discharging the contractual obligations. Such is the case here. The letter of guarantee was given in this case by the plaintiff and the defendant placed it for the encashment of the letter of guarantee. The bank (Chartered Bank) is only obliged to comply with the demand made by the appellant Uttara Bank. It is nobody's case that there is any fraud of which the bank got notice. The only dispute is as to the performance of contract and this dispute can be resolved by taking resort to appropriate actions and the plaintiff if successful would be entitled to damages but certainly not through an order of injunction which would interfere with the normal banking transaction and also the contractual obligation of the bank, The balance of convenience is also against the grant of injunction.”

In the case of Gooryonly (BD) Textile Ltd. Vs. Chartkar Information Holding Ltd and others [54DLR(AD)(2002)70] the plaintiff-petitioner filed a suit claiming US\$ 16,23,628 equivalent to Taka 9 crore as compensation for damages

suffered when defendant-respondents supplied sub-standard quality and damaged fabric. The petitioner filed an application for attachment before judgment under Order 38, rule 5 of the Code of Civil Procedure whereupon an order of ad-interim attachment was made and upon hearing the defendants the order was made absolute attaching the property. On an appeal there from the High Court Division allowed the appeal by the impugned order setting aside the order of attachment. The Appellate Division affirmed the judgment of the High Court Division setting aside the order of attachment.

The Principles Governing Issuance of Temporary Injunction :

In order to be successful in an application for temporary injunction the applicant must show that :

- (1)The applicant has a prima facie arguable case.
- (2)Balance of convenience lies in favour of granting an order of temporary injunction.
- (3)The applicant cannot be compensated by monetary damages.

In the famous case of American Cyanamid Co. vs. Ethicon Ltd. [H.L.(E)1975A.C.396] Lord Diplock reiterated the well-established principles governing temporary injunction :

"The object of the interlocutory injunction is to protect the plaintiff against injury by the violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial; but the plaintiff's need for such protection must be weighed against the corresponding need of the defendant to be protected against injury resulting from his having been prevented from exercising his own legal right for which he could not be adequately compensated under the plaintiff's undertaking in damages if the uncertainty were resolved in the defendant's favour at the trial. The Court must weigh one need against another and determine where "the balance of convenience" lies."

INTERIM ORDER TO STOP PAYMENT UNDER LETTER OF CREDIT

United Kingdom

Courts in the United Kingdom will in exceptional cases grant interim order such as injunction to stop payment under letter of credit where there is clear evidence of fraud.⁶

⁶ Edward Owen Engineering Limited vs. Barclays Bank International Ltd., [1978] QB 159

In the case of *Bolivinter Oil SA vs. Chase Manhattan Bank*⁷
the Court of Appeal held :

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

India

In the case of *Tarapore and Co. Vs. Tractoroexport, Moscow* [AIR 1970SC891] in pursuance of a contract with a Russian firm for supply of machinery, an Indian firm opened a confirmed irrevocable letter of credit with a bank in favour of a Russian firm. The Indian firm brought a suit alleging that

⁷ (1984)1All England Reports 351

the seller supplied machinery of inferior quality. The buyer prayed for order restraining the Bank of India and the Russian firm from taking any further steps in pursuance of the letter of credit opened by the Indian firm in favour of the Russian firm. Further prayer was made for restraining the Russian firm from enforcing it. The Russian firm opposed those applications but the trial Court granted the temporary injunction. The Russian first applied to the Supreme Court of India for special leave to appeal against the interim orders passed by the trial court. The Supreme Court allowed the applications and as a result civil appeals were filed. After hearing the Supreme Court set aside the order of temporary injunctions granted by the trial court. The Supreme Court quoted from Halsbury's Laws of England and the said quotation is reproduced below :

"It is often made a condition of a mercantile contract that the buyer shall pay for the goods by means of a confirmed credit, and it is then the duty of the buyer to procure his bank, known as the issuing or originating bank, to issue an irrevocable credit in favour of the

seller by which the bank undertakes to the seller, either directly or through another bank in the seller's country known as the correspondent or negotiating bank, to accept drafts drawn upon it for the price of the goods, against tender by the seller of the shipping documents. The contractual relationship between the issuing bank and the buyer is defined by the terms of the agreement between them under which the letter opening the credit is issued, and as between the seller and the bank, the issue of the credit duly notified to the seller creates a new contractual nexus and renders the bank directly liable to the seller to pay the purchase price or to accept the bill of exchange upon tender of the documents. The contract thus created between the seller and the bank is separate from, although ancillary to, the original contract between the buyer and the seller, by reason of the bank's undertaking to the seller, which is absolute. Thus, the bank is not entitled to rely upon terms of the contract between the buyer and the seller which might permit the buyer to reject the goods and to refuse payment thereof and, conversely, the buyer is not

entitled to an injunction restraining the seller from dealing with the letter of credit if the goods are defective.”

Pakistan :

In the case of Kohinoor Trading (Pvt) vs. Mangrani Trading Co. and Ors ⁸ the appellants entered into an agreement to buy goods from respondent No. 2 through respondent No 1 for a price of US\$100,725 and opened an irrevocable letter of credit on 15.06.1986 with respondent No. 3 bank. After the arrival of the goods at port of Karachi, the appellants alleged that on the representation of respondent No. 1 and 2, they took delivery of the goods and as the visible conditions of the goods was not satisfactory, they arranged for survey and laboratory test of the goods after notice to the respondents. It was revealed that the goods did not correspond with their description. As such the appellants filed suit for declaration the defendant Nos 1 and 2 committed breach of contract and the plaintiff is entitled to a money decree. The plaintiff filed an application for injunction. Defendants opposed the

⁸ High Court Appeal No. 48 of 1987, Decided on 20.04.1987

application. The learned Single Judge issued ad interim injunction restraining remission of six lakhs rupees by respondent No. 3 Bank under the letter of credit. Subsequently the learned Single Judge recalled the ad interim order of injunction “because the contract has already been completed goods have been supplied and in fact, they have been sold unilaterally by the plaintiff. In case the plaintiff has suffered any loss it can be adequately compensated in terms of money.”

The defendants preferred appeal. The High Court of Sindh, Karachi held :

“(T)he appellants had taken the delivery of the goods from the carrier without any protest. The question, whether the goods were despatched by respondent No. 2 in accordance with the description given in the letter of credit or whether there was any breach as to the quality would be an issue at the trial. In our view, under an irrevocable letter of credit payment cannot be stopped on the ground that there was some breach on the part of the vendor as to the quality of the goods. An irrevocable letter of credit is a negotiable document in the

commercial world which is negotiated inter alia inter se between the banks and, therefore, the Court cannot lightly cause its dishonouring by one bank to another, unless prima facie a sufficiently grave cause is shown”.

Bangladesh

In the case of Uttara Bank vs Macneil and Kilburn⁹, Macneil and Kilburn filed a suit for declaration that the final notice of claim by the appellant Bank against respondent No. 2 for encashment of letter of guarantee is illegal and for restraining the appellant from encashing the letter of guarantee and respondent No. 2 from honouring the said letter of guarantee. The trial court rejected the plaint under Order 7, rule 11 of the Code of Civil Procedure. The said order was affirmed by the court of appeal below. The plaintiff filed second appeal in the High Court Division which was admitted. On the application of the plaintiff the High Court Division granted order of temporary injunction for restraining respondent No. 2 from honouring the letter of guarantee. Relying upon the principle laid down in American Cyanamid Co. vs. Ethicon Ltd. H.L. (E) 1975 A.C. 396 the Hon’ble Appellate Division held that

⁹ 33 DLR (AD) 298

the High Court Division granted injunction erroneously and as such set aside the order of injunction.¹⁰

In the case of Gooryonly (BD) Textile Ltd. Vs. Chartkar Information Holding Ltd and others [54 DLR(AD)(2002)70] the plaintiff-petitioner filed a suit claiming US\$ 16,23,628 equivalent to Taka 9 crore as compensation for damages suffered when defendant-respondents supplied sub-standard quality and damaged fabric. The petitioner filed an application for attachment before judgment under Order 38, rule 5 of the Code of Civil Procedure whereupon an order of ad-interim attachment was made and upon hearing the order was made absolute attaching the property. On an appeal there from, the High Court Division allowed the appeal by the impugned order setting aside the order of attachment. The Appellate Division affirmed the judgment of the High Court Division setting aside the order of attachment.

In the case of Meejab Limited vs. AA Knitspin Limited¹¹ the plaintiff filed a suit for declaration that the plaintiff, engaged in the export of readymade garments, through defendant Nos.

¹⁰ Uttara Bank vs. Macneil & Kilburn, 33DLR (AD) (1981) 298

¹¹ First Miscellaneous Appeal No. 242 of 2021 with Civil Rule No. 202 (FM) of 2021

10-11 are not bound to make payment to defendant Nos. 1-5 against Back to Back Letter of Credit. The plaintiff also filed an application for temporary injunction. The trial court rejected the said application. The High Court Division affirmed the order of the trial court.

CONCLUSION

In this case the buyer entered into a contract of sale for purchasing goods from the seller. A letter of credit was issued by the issuing bank. The buyer alleges that the seller supplied goods of inferior quality. It is an established principle of law that letter of credit is independent of the underlying contract.

¹²In international sale banks deal with documents and not with goods.¹³ So long as there is no discrepancy in the documents the issuing bank is under an obligation to make payment to the seller. The buyer did not raise any objection regarding any discrepancy in the documents to the bank in accordance with provisions of UCP 600. After taking delivery of the goods the buyer alleges that there was fraud as the goods supplied of were of inferior quality. It is established principle of law that

¹² UCP 600, Article 4

¹³ UCP 600, Article 5

the evidence of fraud must be clear and evident, the mere allegation of fraud is not sufficient.¹⁴

Since the plaintiff could not prove clear case of fraud it is not entitled to get an order of injunction. Even it could prove fraud, if the plaintiff can be adequately compensated, the court will not grant injunction.¹⁵ The plaintiff filed a suit claiming compensation and permanent injunction. Therefore the balance of convenience does not lie in favour of granting injunction because the plaintiff could be compensated by monetary damages. The courts below rightly refused to grant injunction.

As such I do not find any illegality in the impugned order passed by the courts below.

Accordingly, the Rule is discharged without any order as to cost.

Interim order of status-quo is hereby recalled and vacated.

Transmit a copy of this judgment and order to the concerned court below at once.

Kazi Zinat Hoque, J

¹⁴ Edward Owen Engineering Limited vs. Barclays Bank International Limited .

¹⁵ American Cyanamid vs. Ethicon Ltd, H.L.(E) 1975 A.C., 396; Uttara Bank vs. Macneil and Killburn, 33DLR (AD) 298