

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

**First Miscellaneous Appeal No.173 of 2023**  
**with**  
**Civil Rule No. 493 (FM) of 2023**

**In the matter of:**

Silver Composite Textile Mills Ltd (Unit-1,  
Garments) of B. K. Bari, Taltoli, Monipur Bazar,  
Gazipur Sadar, Gazipur, Bangladesh and also of  
Silver Tower 16<sup>th</sup> Floor, Gulshan Avenue,  
Gulshan-1, Dhaka-1212, represented by its  
Managing Director.

... Plaintiff-appellant-petitioner

**-Versus-**

Fashion Options Inc. of OBA Generation one  
1370, Broadway-suite 901, New York, NY  
1001B, USA represented by its Managing  
Director and others.

...Defendants-respondents-opposite parties

Mr. Shah Monjurul Hoque, Advocate with

Mr. Muhammad Harunur Rashid, Advocate

... For the plaintiff-appellant-petitioner

Mr. Mamun Chowdhury, Advocate with

Mr. Mohammad Zahirul Islam, Advocate with

Mr. Sayedul Munim, Advocate

.... For respondent-opposite party No.3

**Heard and Judgment on 25<sup>th</sup> January, 2024**

**Present:**

**Mr. Justice Md. Mozibur Rahman Miah**

**and**

**Mr. Justice Mohi Uddin Shamim**

**Mohi Uddin Shamim, J.**

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

At the instance of the plaintiff in Title Suit No.252 of 2023, this appeal is directed against the judgment and order dated 09.04.2023 passed by the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka in the said suit rejecting the application filed by the plaintiff-appellant under Order XXXIX, rules 1 and 2 read with section 151 of the Code of Civil Procedure.

The salient facts so figured in the application for injunction on which the instant Rule being Civil Rule No.493 (FM) of 2023 was issued, in short, are that the present appellant-petitioner as plaintiff filed aforesaid suit (Title Suit No.252 of 2023) for declaration that, the defendant Nos.1 & 2 violated the terms of the Export Sale Contracts executed between them, a decree for damages, compensation for breach of contract by fraud and forgery committed by defendant Nos.1 and 2 companies against the plaintiff in collaboration with defendant Nos.3-6, a decree for the payment of total amount of USD 160,22,235.14/-

equivalent to taka 168,23,34690.10/- against the defendant Nos.1-7 jointly & severally and interest on the decretal amount under section 34 of the Code of Civil Procedure, a decree for declaration that defendant Nos.3-6 are not entitled to claim money under the *Letter of Credit (LCs)* being Nos. 188022060209 dated 13.10.2022, 188022060224 dated 31.10.2022, 188022060225 dated 31.10.2022, 188022060258 dated 22.12.2022, 188022060259 dated 28.12.2022, 188022060260 dated 29.12.2022, 188022060261 dated 29.12.2022, 188023060023 dated 09.01.2023, 188023060024 dated 09.01.2023 and 188023060025 dated 09.01.2023 (**“LCs”**) until settlement of liability due against the pro-forma invoices and all other relief and relives which the plaintiff is entitled to get under law and equity.

On the very day of filing of the suit, the plaintiff filed an application under Order XXXIX, rules 1 and 2 read with section 151 of the Code of Civil Procedure for temporary injunction restraining the respondents-opposite party No.8 from making any payment in favour of the defendant-respondent-opposite party Nos.3-6 and 9-11 against the aforementioned Letter of Credits (LCs).

But the learned Joint District Judge, 1<sup>st</sup> Court, Dhaka was pleased to reject the said application vide order dated 09.04.2023 holding that there was no '*prima facie*' case found in favour of the plaintiff-appellant referring some reported decisions of the Apex Court.

Against the said rejection order dated 09.04.2023, the plaintiff as appellant preferred this appeal before this Court. After preferring the appeal, the appellant as petitioner then filed an application for temporary injunction seeking self-same relieves which was made at the trial Court under order XXXIX, rule 1 and 2 read with section 151 of the Code of Civil Procedure. However, after hearing the application this Court vide its order dated 15.05.2023 was pleased to issue a Rule and restrained the respondent-opposite party No.8 by an order of *injunction* from making payment in favour of the defendant-respondent-opposite party Nos. 3-6 and 9-11 against the aforementioned Letter of Credit (LCs), which are the subject matter of the appeal and the application, for a period of 03 (three) months. The said order of injunction has subsequently been extended on 06.11.2023 for a further period of 03 (three) months from date.

Mr. Shah Monjurul Hoque, learned Senior Advocate along with Mr. Muhammad Harunur Rashid, learned Advocates appearing for the plaintiff-appellant by taking us to the impugned judgment and order and other connected materials available on record submits that, the Court below failed to consider that the respondent Nos.1 and 2 entered into five contracts for purchase of garments products requiring the appellant to get the raw materials of the said garment products from their nominated agents, respondent Nos.3-6 and then in collaboration with each other committed fraud and cheat with the appellant by not providing the contracted raw materials as evident from making fraudulent declaration in various Certificates and L.C. documents including Certificate of Origin, Pre-Shipment Inspection Certificate, Bill of Lading etc. and then refused to take delivery of finished products made of the raw materials supplied by the respondent Nos.3-6, causing huge financial and business losses to the appellant. He next by mentioning the case of *Zyta Garments Ltd. Vs. Union Bank Ltd. and another*, reported in 55 DLR (AD) 56 submits that it was held by our Apex Court that though opening a Letter of Credit (L.C.) is a separate and independent agreement between the L.C. opening bank and the

negotiating bank, neither the seller nor the buyer has any privity to that agreement. But it had preserved an exception of this very strict rule is of fraud and forgery, which is very much present here in this case. The raw materials which were supplied by the respondent Nos.3-6 not being of satisfactory quality, were depicted in all the export documents in a fraudulent manner and accordingly, the said fraudulent representation of the goods fell well within the exception of the principle set by the Apex Court in the aforementioned case, but the learned Judge of the Court below failed to consider this very aspect of the case and he finally prays for allowing the appeal and also make the Rule absolute by way of an order of injunction restraining the respondent-opposite party No.8 from making payment in favour of the defendant-respondent-opposite party Nos.3-6 and 9-11 against the aforementioned Letter of Credit (L.C.).

Mr. Mamun Chowdhury along with Mr. Mohammad Zahirul Islam, the learned Advocates appearing for the respondent-opposite-party No.3 by taking us to the impugned judgment and order and all other documents so have been appended with the application for injunction at the very outset submits that, the defendant-respondent No.8 Bank did not find any fraud in relation to the documents submitted by the

defendant-respondent No.3 against the L.Cs. in question and as such the defendant-respondent No.8 without raising any objection issued 'Acceptance of Advice' through SWIFT messages on different dates to the Bank of the defendant-respondent No.3, i.e. Bank of Ruifeng, confirming payment against the L,Cs. in question. He next submits that, the defendant-respondent No.8 Bank issued acceptance of advice in favour of the Bank of the defendant-respondent No.3 which clearly shows that the documents were duly accepted by the defendant-respondent No.8. Once the 'Acceptance of Advice' has been issued by the LCs' issuing Bank, the payment against the respective LCs' cannot be stopped under any circumstances. He also submits that, upon establishment of the LCs' in question, a separate and independent contract has been established between the defendant-respondent No.8, i.e. LCs' opening bank and the Bank of the defendant-respondent No.3 i.e. negotiating bank and as such any claim of the plaintiff-appellant does not have any effect on such independent contract between two banks. Moreover, since no allegation had been raised by the defendant-respondent No.8, i.e. L.C. opening bank that the documents presented are forged and fraudulent, the plaintiff-appellant shall not be allowed to

bring any such allegations now. Since the defendant-respondent No.8 duly accepted all documents submitted by the bank of the defendant-respondent No.3 against the L.Cs. in question and gave assurance acceptance of advice to make payment on the maturity date, the defendant-respondent No.8 has no option but to honour its obligation and make the payment against the L.Cs. in question. As such, no injunction can be granted against the disbursement of the payment against the said L.Cs. He also submits that, it is relevant to mentioned here that considering an application filed by the defendant-respondent Nos.4 and 5, this Court vide its order dated 01.08.2023 vacated the order of injunction in relation to the Letter of Credit Nos. 188022060225 dated 31.10.2022, 188023060023 dated 09.01.2023, 188023060024 dated 09.01.2023, 188023060025 dated 09.01.2023. Subsequently, the plaintiff-appellant filed the Civil Petition for Leave to Appeal No.2391 of 2023 before the Hon'ble Appellate Division challenging the aforesaid vacating order, which the Hon'ble Appellate Division did not interfere with the order passed by this Hon'ble Court. He lastly submits that, the cases of the defendant-respondent Nos.4 and 5 and the case of the defendant-respondent No.3 are very much similar in nature.



To substantiate his such assertions, the learned counsel then placed his reliance in the decisions reported in 55 DLR (AD) (2003) 56, 56 DLR (HCD) 55 and 57 DLR (AD) (2005) 194 and prayed for dismissing the appeal as well as discharging the Rule.

We have heard and considered the submissions so advanced by the learned counsels for the plaintiff-appellant as well as the respondents-opposite-parties No.3, perused the memorandum of appeal, the impugned order as well as the documents appended therewith the application for temporary injunction and the supplementary affidavit so filed by the appellant-petitioner.

It has already been settled by our Appellate Division that the Bank can only deal with the documents not with goods or consignment save for fraud if found to have committed in the business transaction. But in the four corners of the plaint as well as in the application for temporary injunction *vis-à-vis* the application filed under section 151 of the Code of Civil Procedure nothing sort of any allegation of fraud has been raised to have committed by those respondents leaving no scope by any Court of law to restrain the LC opening Bank from making payment in favour of the supplier herein the aforesaid respondents.

Furthermore, from the plaint in particular, from paragraph Nos.7, 8, 9 and 10 we find that, some trivial allegation has been made against the foreign suppliers who were made as defendant Nos.3-6 about the inferior quality of goods. But given the above discussion that very allegation cannot be sustained since fraud was not found to have been committed against those respondents as well as no discrepancies were found in the documents so supplied by the respondents to the LC opening Bank. On top of that, it has already been settled in the decision reported in **57 DLR (AD) 194** where it has been propounded that;

***“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.”***

So, basing on that very settled legal proposition, we don't find any iota of merit in the appeal and that of the Rule and hence, the impugned order passed by the learned Judge of the trial court stands.

In the result, the appeal is **dismissed** however without any order as to cost.

Since the appeal is dismissed, the connected Rule being Civil Rule No. 493 (FM) of 2023 is hereby **discharged**.

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

The respondent No.8, One Bank Ltd., Gulshan Branch, CES-F8/A, Richmond Concord, Bir Uttam Shawkat Road, Gulshan Avenue, Gulshan-1, Dhaka is hereby directed to take an urgent step for making payment of the LC value in favour those respondent forthwith.

Let a copy of this order be communicated to the said respondent No.8 forthwith.

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

I agree.

Syed Akramuzzaman  
Bench Officer