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

Present:

Mr. Justice S M Kuddus Zaman

And

Ms. Justice Tamanna Rahman Khalidi

FIRST MISCELLANEOUS APPEAL NO.60 OF 2026
WITH
CIVIL RULE NO.07(FM) OF 2026

SQ Birichina Limited

....Appellant

-Versus-

Mercantile Bank PLC, Gulshan Branch, Gulshan, Dhaka and others

.... Respondents

Mr. Muhammed Mustafizur Rahman Khan, Senior Advocate with
Mr. Kazi Ershadul Alam, Advocate
Mr. Shahriar Shahid Saad, Advocate

…. For the appellant.

Mr. Chowdhury Mokimuddin Khan Jahan Ali, Advocate with
Mr. Md. Mamonor Rashid, Advocate

.... For the respondent No.1.

Mr. A.K.M. Badruddoza, Senior Advocate with
Mr. Ibrahim Hossain, Advocate
Ms. Rabeya Afroz, Advocate
Mr. Md. Mohiuddin Khan, Advocate

…. For the respondent No.3.

Mr. Sanjoy Kumar Kundu, Advocate with
Mr. Deluar Hossain, Advocate
Mr. Chandan Chandra Sarker, Advocate
Mr. Ujjal Paul, Advocate

…. For the respondent Nos.5 and 6.

Heard on 24.08.2026, 31.08.2026 and 01.09.2026.
Judgment on 02.09.2026.

S M Kuddus Zaman, J:

This First Miscellaneous Appeal at the instance of the plaintiff is directed against order No.2 dated 11.01.2026 passed by the learned Joint District Judge, 1st Court, Dhaka in Title Suit No.22 of 2026 rejecting an application filed by the plaintiff under Order XXXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908 for temporary injunction.

In this First Miscellaneous Appeal the appellant submitted a petition under Order 39 Rule 1 of the Code of Civil Procedure for temporary injunction which gave rise to Civil Rule No.07(FM) of 2026. Above First Miscellaneous Appeal and the Civil Rule are heard together and being disposed of by the single judgment.

Facts in short are that the plaintiff instituted above suit for following remedies:

(a) A decree declaring that the plaintiff is not bound to make any payment against the following Letters of Credit (L/Cs), all opened with defendant No.1 Bank under fraudulent circumstances and based on forged and fabricated sales contracts dated 20.07.2025 and the revised sales contract dated 06.10.2025 namely L/C Nos.175925060183, 175925060183-Amend-1, 175925060184 and 175925060184-Amend-1 opened in Fafour of defendant No.3; L/C No.1759250400889 opened in favour of defendant No.4; L/C No.175950400889 opened in favour of defendant No.5; L/C No.1759250400918 opened in favour of defendant No.6; L/C No.1759250401167 opened in favour of defendant No.7; and L/C No.1759250401185 opened in favour of defendant No.6.

(b) A decree declaring that the inspection reports issued by defendant No.8 nominated by defendant No.2, are false, fabricated, fraudulent, and not binding upon the plaintiff.

(c) A decree declaring that the sales contracts dated 20.07.2025 and 06.10.2025, presented by defendant No.2 and relied upon for procurement of raw materials and opening of the aforesaid Letters of Credit, are forged, fraudulent, and void ab initio, and that fraud vitiates all transaction conducted pursuant thereto.

(d) A decree declaring that the plaintiff is not bound to make any payment to defendant Nos.3 to 7, or to any other person, in respect of raw materials procured or imported pursuant to the forged and fraudulent sales contracts dated 20.07.2025 and 06.10.2025.

(e) A decree declaring that the defendants, particularly defendant Nos.2 to 8, acted in conspiracy, collusion, and bad faith, and that their acts of misrepresentation, fabrication of documents, issuance of false inspection reports, and deliberate delay in shipment are illegal, unlawful, and unforceable against the plaintiff.

(f) A decree of permanent injunction restraining defendant No.1, its officers, agents, representatives, and/or any other person acting on its behalf from making any payment, releasing any funds/foreign exchange, or honouring any obligation against Letters of Credit Nos.175925060183, 175925060183-Amend-1, 175925060184, 175925060184-Amend-1, 1759250400888, 1759250400889, 1759250400918, 175950401167 and 1759250401185, all opened with defendant No.1 Bank.

(g) A permanent injunction restraining the defendant Nos.2-7 from taking any steps towards the negotiation or release of payments against the Letters of Credit Nos.175925060183, 175925060183-Amend-1, 175925060184, 175925060184-Amend-1, 1759250400888, 1759250400889, 1759250400918, 1759250401167, and 1759250401185, all opened with defendant No.1 Bank.

(h) A decree directing the defendants to refrain from taking any coercive, legal or commercial steps against the plaintiff based on the forged sales contract or the impugned inspection report.

In above suit the plaintiff submitted a petition under Order 39 Rule 1 of the Code of Civil Procedure, 1908 for an order of temporary injunction restraining defendant No.1 from making any payment to the negotiating Bank under above Letters of Credit and restrain defendant Nos.3-7 from taking any step to realize money under above Letters of Credit alleging that defendant No.2 a buying house forwarded to the plaintiff a sales contract dated 20.07.2025 of defendant No.9 and in good faith the plaintiff signed above contract and returned the same to defendant No.2 for onward transmission to defendant No.9. Defendant No.2 also forwarded to plaintiff proforma invoices of respondent Nos.3-7 and in good faith the plaintiff instructed his bank defendant No.1 for issuance of Letters of Credit to above respondents for importing fabrics and other accessories. Respondent Nos.3-7 under above Letters of Credit supplied above raw materials and the plaintiff utilizing above raw materials manufactured Men's hoody under above sales contract. Defendant

No.8 on conclusion of pre-shipment inspection submitted a false and fraudulent report staying that above goods were of below quality. The plaintiff approached defendant No.2 for a second inspection but the defendant No.2 did not respond nor his whereabouts could be known. It was revealed from Memo dated 18.07.2025 of defendant No.9 that he did not issue above sales contract. Above sales contract was fraudulently created by defendant No.2. Respondent Nos.3-7 were selected and price of their raw materials was determined by defendant No.2 which show that above defendants were in collusion with defendant No.2 in the commission of above fraud and they are not entitled to get payment under above Letters of Credit.

The learned Joint District Judge rejected above petition for injunction.

Being aggrieved by and dissatisfied with above judgment and order of the learned Joint District Judge above plaintiff as appellant moved to this Court and preferred this First Miscellaneous Appeal.

Mr. Muhammed Mustafizur Rahman Khan, learned Senior Advocate for the appellant submits that the plaintiff acted in bonafide belief that he was forwarded a genuine sales contract of defendant No.9 by defendant No.2 and he accordingly signed above contract on 20.07.2005. On receipt of pro-forma invoices of respondent Nos.3-7 from respondent No.2 the plaintiff in good faith instructed defendant No.1 for issuance of seven Letters of Credit out of which the Letter of Credit issued in favor of respondent No.3 was an international Letter of Credit and other six were domestic Letters of Credit. On receipt of fabrics and accessories from respondent Nos.3-7 the appellant manufactured men's hoodys under above sales contract and made those ready to export. Defendant No.2 fraudulently appointed defendant No.8 for inspection of above goods who submitted a false report stating that above goods were of below standard. The plaintiff tried to mitigate genuine grievance of the buyer and proposed another inspection but defendant No.2 fled away and his whereabouts could not be found. Above conspiracy and fraud were revealed from the letter sent by defendant No.9 to the appellant on 18.12.2025 mentioning that defendant No.9 did not issue any sales contract by passing their his Office at Dhaka. Above letter shows that the plaintiff was subjected to a gigantic fraud by defendant No.2 and defendant Nos.3-7 acted in collusion with defendant No.2 to cause financial and business losses to the plaintiff. Defendant No.2 did not get any money under above transaction but he would get his share from defendant Nos.3-7 out of the money under above Letters of Credit. All above Letters of Credit were vitiated by above fraud and defendant Nos.3-7 are not entitled to get payment under above Letters of Credit. If the payment of defendant No.3 a foreign company under above Letter of Credit is not stopped by injunction valuable foreign currencies will go out of the country and the plaintiff will not be in a position to recover above money. The learned Joint District Judge totally failed to appreciate above facts and circumstances of the case and materials on record and most illegally rejected above petition for injunction which is not tenable in law. In support of above submissions the learned Advocate refers to the case of Hindustan Steel Works Construction Ltd. Vs. Tarapore and Co. reported in (1996) 5 SCC Page No.34 and the case of Abdur Rashid Vs Mobaswar Ahmed reported in 8 BLC(AD)(2003) Page No.11.

On the other hand Mr. A.K.M. Badruddoza, learned Senior Advocate for respondent No.3 submits that appellant himself executed the sales contract dated 20.07.2025 with defendant No.9 and no other defendant was a party or a witness to above contract. The defendant acted on the basis of above sales contract without any Letter of Credit from above buyer. It has been alleged that above sales contract was a false and fraudulent document which was created by defendant No.2. There is no allegation that respondent Nos.3-7 had any role in the making or execution of above sales contract. On receipt of pro-forma invoices from respondent Nos.3-7 the appellant instructed defendant No.1 to issue Letters of Credit and above respondents on the basis of above Letters of Credit supplied fabrics and accessories. It is admitted that the appellant received above fabrics and accessories without any objection and utilized above raw materials in the making of the men's hoody under above sales contract. It is true that respondent Nos.3-7 were selected and value of their goods was determined by defendant No.2 but above facts do not prove unlawful collusion of respondent Nos.3-7 with respondent No.2. It is a norm of international trade and commerce that the buyer or his agent selects the country of origin of raw materials or particular supplier to ensure good quality of the product. The learned Advocate lastly submit that it has been held by the Appellant Division of the Supreme Court of Bangladesh in the case of Zyta Garments Ltd. vs Union Bank Ltd. and another reported in 55 DLR (2003) Page No.57 that a Letter of Credit is an independent agreement between two Banks and neither the seller nor the buyer has any privity to that agreement. The allegations of fraud brought by the appellant are against the sales contract between the plaintiff and defendant No.2 and not against above Letters of Credit or any relevant document submitted by above respondents to their respective banks nor there is any allegation as to the quality or quantity of the raw materials they supplied under above Letters of Credit. On consideration of above facts and circumstances of the case and materials on record the learned Joint District Judge rightly rejected the petition for injunction under Order 39 Rule 1 of the Code of Civil Procedure, 1908 which calls for no interference.

Mr. Md. Mamonor Rashid, learned Advocate for respondent No.1 and Mr. Sonjoy Kumar Kundu, learned Advocate for the respondent Nos.5 and 6 adopted above submissions of Mr. A. K. M. Badruddoza, learned Advocate for the respondent No.3.

We have considered the submissions of the learned Advocate for the respective parties and carefully examined the impugned judgment and order and all other materials on record.

At the very outset the plaintiff has sought several declaratory reliefs under section 42 of the Specific Relief Act, 1877 against seven Letters of Credit issued by defendant No.1 and permanent injunction restraining defendant No.1 from making payment under above Letters of Credit. But no consequential relief in the form of compensation or damage was sought against defendant No.2 for mitigating the loss of the plaintiff. The plaintiff did not seek any remedy against defendant No.2 who was allegedly the mastermind of above gigantic fraud. The sole purpose of the plaintiff was to stop payment under seven Letters of credit but the negotiating banks were not made parties in above suit. Plaintiff is aggrieved due to refusal of defendant No.2 to receive delivery of Men's hoody by defendant No.2 but there is no mention of the whereabouts of above finished good in the plaint.

It is admitted that the plaintiff executed a sales contract with defendant No.9 on 20.07.2005 for supply of Men's hoody and it turns out from a copy of above contract that no other defendant was a party or witness to above contract. The plaintiff has alleged to come to know as to the forgery and falsity of above sales contract from letter dated 18.12.2025 of defendant No.9. It turns out from above letter of defendant No.9 that a generalized statement was made to the effect that all purchase orders of above company were sent though its Bangladesh liason Office at Dhaka. There is no specific mention that above sales contract dated 20.07.2025 does not belong to defendant No.9 or no authorized person of defendant No.9 executed above contract.

The pro-forma invoices of respondent No.3-7 were sent to the appellant by respondent No.2. It turns out from emails sent to the Appellant by respondent No.2 that respondent Nos.3-7 were selected and the value of their goods were determined by respondent No.2. The learned Advocate for the appellant submits that above facts show unlawful collusion between respondent Nos.3-7 and respondent No.2. But it is admitted that on the basis of above Letters of Credit respondent Nos.3-7 supplied fabrics and accessories to the appellant who received those materials without any objection and utilized above materials for manufacturing Men's hoody under above sales contract. The learned Advocate for the appellant frankly concedes that it has become a norm in the international trade and commerce that the purchaser selects the country of origin of the raw materials and even select the particular supplier of the raw materials to ensure quality of goods. The fact that the buyer or his agent selected the suppliers of raw materials alone does not prima facie prove unlawful collusion between the suppliers of raw materials and the buyer or his agent. An allegation of fraud or collusion must be substantiated by necessary statements of facts which constitute fraud or collusion and then at trial prove above facts by legal evidence. On a careful scrutiny of the plaint and the petition for injunction we are unable to find statements of fact which prima-facie prove unlawful collusion between respondent No.3-7 and respondent No.2.

The allegation of fraud has been brought against respondent No.2 as to above sales contract dated 20.07.2025 but a Letter of Credit is an independent agreement between the issuing bank and the negotiating Bank and it has no bearing of the contract of sale between the buyer and the seller which may be the foundation or basis of the Letter of Credit. There is no allegation that the documents submitted by defendant Nos.3-7 to their respective Banks for getting payment under above Letters of Credit were tainted by fraud or errors or any other form of deficiency. The appellant did not raise any objection as to quality or quantity of the raw materials supplied by respondent Nos.3-7 under above Letters of Credit.

Respondent Nos.3-7 relying on the Letters of Credit issued by defendant No.1 supplied raw materials and then deposited all relevant documents to their respective Banks for payment. In the absence of allegation of fraud or error in above documents or supplied goods under above Letter of Credit we are unable to accept the submissions of the learned Advocate for the appellant that to protect irreparable loss and injury of the appellant the payments under above Letters of Credit should be stopped by an order of injunction.

It turns out that the appellant did not exercise due diligence in executing the sales contract dated 20.07.2025 with a foreign company and without receipt of a Letter of Credit from defendant No.9 directed respondent No.1 for issuance of seven Letters of Credit for importing raw materials. On the other hand respondent No.3-7 acted on the basis of above Letters of Credit and supplied raw materials and submitted all relevant documents for getting payment. Respondent Nos.3-7 cannot be penalized for the alleged fraud committed by respondent No.2 or for callousness of the appellant.

The facts and circumstances of the cases refer to above by learned Advocate for the appellant are not related to payment of money under Letter of Credit. The Indian Supreme Court case was related to payment under a bank guarantee and the case of 8 BLC (2003) was related to a dispute arising out of a bainapatra for purchase of land and above case laws are not at all applicable in the present case in hand.

In above view of the facts and circumstances of the case and materials on record we are unable to find any illegality or irregularity in the impugned judgment and order passed by the learned Joint District Judge nor we find any substance in this First Miscellaneous Appeal which is liable to be dismissed.

In the result, this Firs Miscellaneous Appeal is dismissed.

The connection Civil Rule being No.07(F.M.) of 2026 is discharged.

The order of injunction granted earlier by this Court is hereby vacated.

However, there will be no order as to cost.

Send down the lower Court's record immediately.

Tamanna Rahman Khalidi , J:

I agree.

MD. MASUDUR RAHMAN
BENCH OFFICER