

**(1979) 03 CAL CK 0029**  
**Calcutta High Court**  
**Case No:** Suit No. 742 of 1978

Indian Cable Company Ltd.

APPELLANT

Vs

Plastic Products Engineering  
Company and Another

RESPONDENT

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**Date of Decision:** March 19, 1979

**Acts Referred:**

- Contract Act, 1872 - Section 124

**Citation:** AIR 1979 Cal 370

**Hon'ble Judges:** Padma Khastgir, J

**Bench:** Single Bench

**Advocate:** Tapas Banerjee, for the Appellant; B.K. Chatterjee, for Defendant No. 1, for the Respondent

**Final Decision:** Dismissed

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**Judgement**

@JUDGMENTTAG-ORDER

Padma Khastgir, J.

This is an application taken out by the plaintiff, Indian Cable Company Limited for an order of injunction restraining the defendant No. 1, Messrs. Plastic Products Engineering Company from making any demand and/or receiving any payment under the bank guarantee dated May 12, 1977 and/or taking any steps for performance of the said Bank guarantee. The petitioner has also asked for an order of injunction restraining the defendant No. 2, Punjab National Bank from making any payment or releasing any money under or in terms of the said Bank guarantee.

2. The petitioner's case shortly is that in the year 1973 Messrs, plastic Products Engineering Co. filed a writ application in the Gujarat High Court contending, inter alia, that its products including PTFE tape were not liable to excise duty. Indian Cable purchased from Messrs. Plastic Products Engineering Company goods including PTFE tape of the total value of Rs. 17,73,031.36 between June, 1974 and May, 1977.

On June 17, 1976 the Collector of Central Excise adjudicated upon the issue in question holding that the products of M/s. Plastic Products were subject to levy of Central Excise Duty. Thereafter another writ petition was filed challenging the said order of Collector. The Bank guarantee in terms of the agreement was furnished by Punjab National Bank on behalf of Indian Cable for a sum of Rs. 5,71,991.48.

Pursuant to the agreement M/s. Plastic , Products Engineering Company called upon the Punjab National Bank to make payment in terms of the said Bank guarantee. On the 30th of Mar. 1978 the Central Excise Authorities served demand notice on Plastic Products Engineering Company for payment of excise duty of its product including PTFE sheets and tapes. Thereafter Messrs. Plastic Products Engineering Company demanded payment of Rs. 6,99,137.78 from Indian Cable who also disputed its liability to pay as according to them no duty was payable on tapes but on sheets only. Indian Cable disputed its liability on that. Plastic products sought for some clarifications and clarifications obtained from the Central Excise Authorities (were) to the effect that the products of M/s. Plastic Products Engineering Company including PTFE sheets were liable to levy of excise duly. After that M/s. Plastic Products Engineering Company through their Advocates called upon Punjab National Bank to make payment in terms of the Bank guarantee. Indian Cable wrote to Punjab National Bank to the effect that M/s. Plastic Products were not entitled to invoke the said Bank guarantee. On 3rd of Oct. 1978 M/s. Plastic Products Engineering Company filed a suit in the Court at Ahmedabad, inter alia, for enforcement of the said Bank guarantee. On 4th of Oct. 1978 Indian Cable filed this suit and obtained an interim order. Thereafter M/s. Plastic Products Engineering Company took out an application for stay of this suit on the ground that the subject matter, parties and the reliefs claimed were identical with the suit that has been filed before the Ahmedabad Court and after hearing the parties on 4th of Feb. 1979 I pass an order staying the present suit.

3. Under the Bank guarantee, (i) the Bank guarantee would remain in force till the writ petition is finally disposed of by a Court of law but not later than one year from the date of the guarantee, i. e. 5th Apr. 1978; (it) the Bank guarantee shall be enforceable against the Bank for the amount of excise duty actually paid by the Manufacturer; (in) The Manufacturer is entitled to recover from the purchaser the amount of excise duty as finally assessed. All other terms would appear from the said guarantee Bond.

4. The said writ petition was disposed of on 23rd of June, 1977, as such the defendant had called upon the Bank to make payment. But the plaintiff has taken the stand that PTFE tapes were not excisable products; as such they refused to pay and the plaintiff also wrote to the defendant Bank that the guarantee could not be enforced as the terms under the guarantee bond had not been fulfilled and/or complied with.

5. Dr. Tapas Banerjee submitted first of all that although the suit has been stayed still this Court has jurisdiction to grant injunction in proper cases. Secondly he submitted that guarantor is a favoured debtor and his liability has to be ascertained from the four corners of the guarantee and in that respect he craved reference to [State of Maharashtra Vs. Dr. M.N. Kaul \(Deceased by his Legal Representatives\) and Another](#), and [State Bank of India Vs. The Economic Trading Co. S.A.A. and Others](#), . He further submitted that in a case where it is a conditional guarantee the "conditions of the guarantee must be first found out and they must be fulfilled in order to give the right to enforce the guarantee. According to Dr. Banerjee, before such guarantee could be enforced there should be a final assessment and assessment must be in respect of PTFE tapes and not sheets and such guarantee would be enforced against the Bank in respect of actual excise duty paid by the manufacturer. Guarantee must be invoked within the period it remained in force i. e. till the writ petition was finally disposed of. According to Dr. Banerjee, as none of the said conditions have been fulfilled the said Bank guarantee cannot be enforced inasmuch as the said writ petition was disposed of on 23rd of June, 1977 and no payment having been made before that date the guarantee cannot be enforced now. According to Dr. Banerjee "not later than one year from the date of the guarantee, i. e., 5th of Apr. 1978" means time limit taking into consideration the outer limit inasmuch as this writ petition has been disposed of earlier than 5th of April, 1978; as such guarantee has ceased to be enforceable from that date. If the writ petition was not disposed of before 5th of Apr. 1978 then, in that event, guarantee would cease on that date. As the guarantee in this case was invoked by a letter dated 30th of Mar. 1978 which is long after the disposal of the writ petition; as such the company is not entitled to enforce the guarantee. Moreover no final assessment has been made and served on the plaintiff nor any proof has been given whether, in fact, such duty has been paid by the manufacturer.

6. Mr. B.K. Chatterjee opposed this application on behalf of M/s. Plastic Products Engineering Company and submitted that by looking at the guarantee bond one will find immediately that in the last clause it has been agreed "Notwithstanding anything contained hereinbefore our liability under this guarantee is restricted to Rs. 5,71,991.48. Our guarantee shall remain in force until 5-4-1978. Unless an action to enforce a claim under the guarantee is filed against us within six months from the date of expiry, i.e., 5-4-78 all your rights under the said guarantee shall be forfeited and we shall be relieved and discharged from all liability there under" As such under that clause the time would have expired on 15-10-1978. But the suit has been filed by M/s. Plastic Products Engineering Company on 3rd Oct. 1978 which is well within the period as covenanted under guarantee bond. According to Mr. Chatterjee the excise duty has been finally assessed and demand has been communicated to the plaintiff as agreed to under Clause 5 of the guarantee bond; in default of payment by the party the manufacturer would be entitled to enforce the bank guarantee. The manufacturer has also furnished to the purchaser a photostat copy of the demand

notice. The guarantee given is an irrevocable guarantee and it cannot be revoked by any notice or otherwise. According to Mr. Chatterjee, the only issue that was before the Collector of Excise was the determination of excise duty payable in respect of PTFE sheets; as such the decision has been given by Excise Authorities to the effect that such sheets were excisable. The question whether the tapes were excisable or not were not mooted before the Excise Authorities as tapes were excisable and there was no dispute with regard to that and from subsequent correspondence it would appear that excise duty was payable not only in respect of PTFE sheets but also PTFE tapes manufactured by the defendant company.

7. Mr. Chatterjee referred to (1978) 1 All ER 976 at 979 and 981 and submitted that letter of credit and bank guarantee are equated on the same footing; as such bank guarantee must be honoured. He further referred to a case reported in [Tarapore and Co. Vs. V/O Tractoroexport and Another](#), and to an unreported judgment of Mr. Justice A. N. Sen and Mr. Justice Basak in Bird & Co. v. Tripura Jute Mills which was passed on the 8th of June, 1978\* and submitted that this application should be dismissed with costs.

8. From the demand letter on 1st July, 1978 it would appear that the Central excise duty has been charged and demanded in respect of PTFE sheets as also tapes. Mr. Chatterjee further submitted that the present suit was filed by the plaintiff and it obtained an interim injunction from the learned Vacation Judge with the mala fide intention of avoiding its liability to pay the excise duty which has been secured by way of Bank guarantee. The plaintiff before me, according to Mr. Chatterjee, has no right to obstruct payment and from lawfully discharging its banking function and dues by an order of injunction.

9. In the - absence of allegation of fraud the terms of the Bank guarantee must be strictly observed. In the present case before me no such circumstances . and/or facts have been pleaded to entitle the plaintiff to get an order of injunction restraining the Bank from making any payment in terms of the bank guarantee. The respondents after several demands having (been) made had no alternative or choice but to enforce the Bank guarantee within the period specified under the said Bank guarantee. It would appear from the facts stated above that the respondent has tried to enforce the Bank guarantee after giving full opportunities to the plaintiff before me to honour the said demand but on the plaintiff's failure to comply with the said demand, the respondent No. 1 had no choice but to demand on 3rd Oct., 1978 by not only making demand to the defendant Bank but also by filing a suit in the Ahmedabad Court. If the plaintiff is at all prejudiced because of enforcement of the Bank guarantee the plaintiff has the right to file a suit for recovery of the same from the defendant No. 1 if such occasion arises. But in the present petition there are no pleadings of compelling circumstances or special factors which would entitle the plaintiff to get an order of injunction restraining the defendant Bank from making payment in terms of the Bank guarantee. Prima facie it appears that all

conditions that have been agreed to by and between the parties under the Bank guarantee have been complied with and the defendant No. 1 is entitled to enforce the Bank guarantee under the agreement.

10. In the case reported in [Texmaco Ltd. Vs. State Bank of India and Others](#), it has been held "in the absence of special equities arising from a particular situation which might entitle the party on whose behalf guarantee is given to an injunction restraining the bank in performance of the bank guarantee and in the absence of any clear fraud, the bank must pay to the party in whose favour guarantee is given on demand, if so stipulated and whether the terms are such that will have to be found out from the performance guarantee as such. Where though the guarantee was given for the performance by the party on whose behalf guarantee was given, in an orderly manner its contractual obligation, the obligation was undertaken by the Bank to repay the amount on first demand and without contestation, demur or protest and without reference to such party and without questioning the legal relationship subsisting between the party in whose favour guarantee was given and the party on whose behalf guarantee was given and the guarantee also stipulated that the bank should forthwith pay the amount due notwithstanding any dispute between the parties aforesaid, it must be deemed that the moment a demand was made without protest and contestation the Bank had obliged itself to pay irrespective of any dispute as to whether there had been performance in an orderly manner of the contractual obligation by the party. Consequently in such a case the party on whose behalf guarantee was given was not entitled to an injunction restraining the bank in performance of its guarantee."

11. In the case reported in (1977) 3 WLR 764 Lord Denning M. R. observed "All this leads to the conclusion that the performance guarantee stands on a similar footing to a letter of credit. A Bank which gives a performance guarantee must honour that guarantee according to its terms. It is not concerned in the least with the relations between the supplier and the customer, nor with the question whether the supplier has performed his contracted obligation or not; nor with the question whether the supplier is in default or not. The Bank must pay according to its guarantee on demand, if so stipulated, without proof or conditions. The only exception is whether there is a clear fraud of which the Bank has notice."

12. In the case reported in [Texmaco Ltd. Vs. State Bank of India and Others](#), Sabyasachi Mukharji, J. has further added, over and above the ground of fraud, the question of special equities (has) to be taken into consideration while granting an order of injunction.

13. In the case reported in [The Minerals and Metals Trading Corporation of India Ltd. Vs. Surajbalaram Sethi and Another](#), a Division Bench of this Court held; "The Courts are slow to interfere with the operation of irrevocable letter of credit not merely on the ground of their importance in the international trade but also on the ground that under the terms and conditions of their issue, the beneficiary who is

often the seller, is assured of payment by the Bank once he complies with the terms and conditions of the letter of credit irrespective of his non-compliance with the terms of the contract into which he has entered with the buyer or in other words, on the ground of autonomy of the letter of credit., The distinction between an irrevocable letter of credit and a bank guarantee is not merely one of function viz., that the former is important in international trade and the latter for internal trade. A bank guarantee like any other contract is no more or no less than what the parties make it. Payment under a Bank guarantee like payment under a letter of credit becomes due only on compliance with the terms on which the Bank is to pay under the respective documents. Nobody has ever claimed that a letter of credit becomes payable until and unless conditions of payment are satisfied; likewise conditions for payment under a Bank guarantee have to be satisfied before payment can be legitimately claimed. In order to issue a temporary injunction restraining the enforcement of a Bank guarantee the Court has to come to the conclusion that having regard to the terms and conditions of the guarantee, payment under the guarantee has not become due or at least there is a fair and arguable prima facie case for such a contention".

14. In the case reported in (1978) 1 All ER 976 (Edward Owen Engineering Limited v. Barclays Bank International Ltd.) it has been held: "Under a Bank guarantee a Bank must pay regardless of the merits of the disputes between the supplier and the buyer and the only exception to that rule has been made in cases of fraud". That case further held, "Performance guarantees are virtually only promissory notes payable on demand." It was further held "that the performance guarantees stand on a similar footing to that of a letter of credit; as such a Bank which gives the performance guarantee must honour that guarantee according to its terms". It has been further held: "It is only in exceptional cases that the Court will interfere with the machinery of irrevocable obligations assumed by Banks. These are life blood of international commerce. Such obligations are regarded as collateral to the underlying rights and contentions between the merchants at either end of the banking chain."

15. In the facts and circumstances of the case I do not see that there is any fraud and/or special equities which would entitle the petitioner before me to get an order of injunction restraining the Bank from enforcing Bank guarantee as, prima facie, the terms envisaged in the said Bank guarantee seem to have been complied with by the parties; as, such I dismiss this application with costs.

16. Interim order vacated. There will be a stay of operation of order for seven days.