

## Canara Bank Vs Gobbs Kay India and others

**Court:** Delhi High Court

**Date of Decision:** Aug. 28, 1991

**Hon'ble Judges:** P.K. Bahri, J

**Bench:** Single Bench

### Judgement

@JUDGMENTTAG-ORDER

P.K. Bahri, J.

This is a suit for recovery of Rs. 3,76,256.64. Defendant No. 1 is a partnership firm comprising defendants Nos. 2 to 5 as

partners. Defendant No. 6 is stated to be a guarantor. Facts as stated in the plaint, in brief, are that, in October, 1975, defendant No. 1, the

partnership-firm opened a current account with the plaintiff-bank, Connaught Circus Branch, New Delhi, and, on December 31, 1975, the

plaintiff-bank, on the request of the defendants, sanctioned certain facilities to the defendants which are (a) extended packing credit limit up to Rs.

50,000, (b) packing credit against railway receipt/lorry receipts, etc., up to Rs. 2 lakhs, and (c) bill discounting facility up to Rs. 3 lakhs. The

defendants are stated to have executed the usual documents in respect of these facilities and defendant No. 6 on January 7, 1976, is stated to have

executed a guarantee deed in consideration of the plaintiff-bank granting those facilities to defendant No. 1.

2. On April 24, 1976, defendant No. 1, through defendant No. 2, presented for negotiation an irrevocable letter of credit issued by the Central

Bank of Iraq, Baghdad, for a sum of pounds 27,718 in which defendant No. 1 was the beneficiary and the same represented the price of certain

veterinary instruments and appliances like artificial insemination equipment, poultry incubators, etc., as per invoice dated October 22, 1975. The

consignee of the goods was the Director-General of Animal Resources, Alkhir-Bridge, Baghdad, Iraq. The said letter of credit mentioned the State

Bank of India as the negotiating bank. The State Bank of India, vide its letter dated November 20, 1975, informed the defendants that it had

received an authenticated cable dated November 8, 1975, from the Central Bank of Iraq regarding the issuance of the said letter of credit. The

State Bank of India further made it clear that it did not accept any responsibility in respect of the said letter of credit.

3. On April 24, 1976, the plaintiff-bank was approached by the defendants for negotiating the letter of credit and required the plaintiff-bank to

purchase (discount) the bill of exchange accompanying the letter of credit drawn by defendant No. 1 on the Director-General of Animal

Resources, Baghdad, Iraq. Defendant No. 2, on behalf of defendant No. 1, issued a letter of even date undertaking on behalf of defendant No. 1

to reimburse the plaintiff-bank on demand all the claims of the bank as set out in the letter arising out of or in connection with the negotiating of the

letter of credit. It is averred that the plaintiff, after accepting the said documents for negotiation, had discounted the bill and given credit to the

defendants to the tune of Rs. 4,61,966.50 which was equivalent to the amount of the letter of credit. A part of the said amount was adjusted by the

plaintiff-bank towards the liabilities existing against the defendants in respect of the said facilities and the remaining amount of Rs. 2,06,966.50 was

utilised by the defendants from time to time for their business. The plaintiff-bank is stated to have then negotiated the said letter of credit by sending

the documents to the Midland Bank Limited, Sheffield, England, which was the nominated bank of the Central Bank of Iraq and the said

nominated bank paid the amount of the letter of credit, namely, pounds 27,718 to the plaintiff-bank.

4. It is averred that, later on, the Midland Bank revealed to the plaintiff-bank that there was an amendment to the letter of credit whereunder the

Central Bank of Iraq undertook to pay only 75% of the value mentioned in the original letter of credit and the balance 25% was to be paid after

the goods were to be inspected by the consignee and this fact was not brought to the notice of the plaintiff-bank by the defendants before the

documents were purchased by the plaintiff-bank. It is averred that the Midland Bank had written a letter dated June 18, 1976, claiming refund of

the amount, inter alia, pleading that the letter of credit was restricted to the State Bank of India as advising bank and that the letter of credit was

amended to allow the payment of 75% only against shipping documents and 25% upon the instructions from the consignee and lastly that the

Central Bank of Iraq had refused to make payment. The plaintiff-bank, acting on the aforesaid letter of the Midland Bank, is stated to have

refunded the total amount to the Midland Bank to the account of the Central Bank of Iraq through Mitsui Bank, London, on July 5, 1976.

5. It is averred that, thereafter, efforts were made for Realizing the amount covered under the letter of credit both by the plaintiff-bank and by the

defendants and defendant No. 2 is stated to have visited Baghdad on a couple of occasions in this connection. It is alleged that all the above steps

including the refund of the amount by the plaintiff-bank were taken by the plaintiff-bank in consultation with defendant No. 2.

6. It is averred that, ultimately, in February, 1978, the consignee in Iraq and/or their agent wrote to the plaintiff-bank that the goods exported by

defendants were damaged before they were delivered to them and they offered to pay a sum of pounds 17,480.50 in full and final settlement of the

claim arising out of the aforesaid letter of credit. It is pleaded by the plaintiff that defendant No. 1, vide its letter dated March 1, 1978, authorised

the plaintiff-bank to accept the said payment in full and final settlement of the claim and the defendants had undertaken to pay the balance amount

to the plaintiff-bank by Installments, i.e., Rs. 10,000 immediately, Rs. 15,000 by the end of March, 1978, Rs. 25,000 by the end of April, 1978,

and balance in monthly Installments of Rs. 10,000 each and, in pursuance of the said undertaking, the defendants paid Rs. 10,000 to the plaintiff-

bank. It is alleged that the plaintiff-bank took steps and received the sum of pounds 17,480.50 from the Central Bank of Iraq. In this way, it is

alleged that the balance amount of Rs. 1,67,334.10 which could not be recovered, became the liability of the defendants which they had

undertaken to clear vide their letter dated March 1, 1978, and as the defendants have failed to pay the amount, the present suit has been filed

claiming the said amount along with interest which came to about Rs. 2,08,922.54 calculated up to May 21, 1979.

7. Defendants Nos. 1 to 3 filed a combined written statement whereas defendants Nos. 4 and 5 filed separate written statements and defendant

No. 6 has also individually filed a written statement contesting the suit. As far as the pleas of defendants Nos. 1 to 5 are concerned, they are

similar. They have taken certain preliminary objections regarding non-maintainability of the suit due to non-joining of necessary parties and the suit

being time-barred and the action of the plaintiff being in violation of the provisions of the Foreign Exchange Regulation Act, 1973, and suit not

having been instituted by any duly authorised person. On merits, material facts regarding opening of the account and granting of various facilities

and negotiations of the letter of credit in question through the plaintiff-bank are not disputed. It is pleaded that the letter of credit was an

irrevocable documentary credit and could not have been amended without the consent of the beneficiary, i.e., defendants and that once the

plaintiff-bank had negotiated the irrevocable letter of credit with their documents and had received the full amount of the letter of credit and

credited the same to the account of the defendants thereafter, it had no right to refund the said amount to the nominated bank or issuing bank and

the same has been done by the plaintiff-bank at its own risk and responsibility and that the defendants had never agreed for refunding the said

amount to the Midland Bank. It was controverted by the defendants that the Midland Bank had raised any grounds for claiming the refund of the

amount or such grounds were communicated to the defendants. It was denied that the defendants had agreed for accepting any amount in full and

final settlement of the claim from the consignee. It was controverted that a letter of credit could be negotiated only through the State Bank of India.

It was pleaded that the letter signed by defendant No. 2 on March 1, 1978, is a document without consideration and does not bring about any

liability of the defendants, particularly of defendant No. 6. It was pleaded that defendant No. 2 was made to sign that letter without understanding

its import as he was to leave for the U.S.A. and the bank had threatened to harass his other partners including his father-in-law, defendant No. 6, if

he were not to sign the said letter. It was pleaded that defendant No. 2, on coming back from the U.S.A., had withdrawn the said letter and has

asked for refund of Rs. 10,000 paid on the basis of the said letter. It was averred that, even if the said letter dated March 1, 1978, is considered

as binding, even then the defendants had agreed to pay the balance amount only if the same was not to carry any interest and the plaintiff-bank was

requested to make recovery of the balance amount from the Central Bank of Iraq along with interest at 18% per annum and, on collecting the said

amount, the plaintiff-bank may give credit for the principal amount to the defendant and retain the interest amount. So, it was pleaded, in any case,

that no interest was liable to be paid by the defendants on the balance amount. Defendant No. 6 repudiated his liability for the amount in question

pleading that the moment the bank had received the amount from the foreign bank, his liability terminated and any liability undertaken by defendant

No. 2 later on does not bind him.

8. In replication, the plaintiff controverted the pleas raised in the written statement of these defendants and reiterated its pleas and the following

issues were framed :

1. Whether the suit has been signed, verified and filed by a duly authorised person ?

2. Whether the suit is barred by time ?

3. Whether the suit is bad for non-joinder of necessary parties ?

4. Whether the defendants are bound by the alleged amendment to the irrevocable letter of credit ?

5. Whether the plaintiff has violated the provisions of the Foreign Exchange Regulation Act, 1973, rules and instructions issued there under and the

directions of the Reserve Bank of India in refunding the amount to the Foreign Bank ?

6. Whether defendant No. 2, as partner of defendant No. 1, authorised the plaintiff to accept pounds 17,480.50 in full settlement of the claim

against the amount mentioned in the letter of credit of pounds 27,718 ?

7. Whether defendant No. 6 is not jointly and severally liable along with other defendants to repay the amounts due to the plaintiff-bank ?

8. Whether the defendants are not liable to pay interest on the debit balance of Rs. 1,67,334.10 from March 1, 1978, till the date of realisation ?

9. What amount is due from the defendants to the plaintiff ?

10. What amount of interest and at what rate the plaintiff is entitled ?

11. Relief.

9. Issue No. 1. - PW-1, B. K. Shekhar Shetty, who has been working as branch manager of the plaintiff-bank from June, 1987, onwards, has

deposed that he has seen Sh. R. J. Kamath signing various documents during the course of his duties and he was in a position to identify his

signatures and that the plaint bears the signatures of Sh. R. J. Kamath. He also proved the copy of the power of attorney which is exhibit P-15. He

had brought the original power of attorney duly attested and authenticated by the Notary Public. Vide this power of attorney, Sh. R. J. Kamath has

been given authority by the plaintiff-bank to institute the present suit. Hence, I hold that the plaint has been signed, verified and instituted by a duly

authorised person of the plaintiff-bank. Issue is decided in favor of the plaintiff.

10. Issue No. 3 - Plea taken in the written statement was that the issuing bank and the Midland Bank and the consignee are necessary parties to

the present suit. The claim of the plaintiff is not against any of those parties. The plaintiff has set up the claim against the defendants in respect of the

balance amount due from the defendants in the facility granted to the defendants. So, those foreign banks and the consignee are neither necessary

nor proper parties to the present suit. No arguments have been addressed by learned counsel for defendants in respect of this particular issue. I

decide the issue in favor of the plaintiff.

11. Issues Nos. 2, 4 and 5. - These issues are inter-connected and so, are being dealt with together. Facts to the case are quite evident that an

irrevocable letter of credit was negotiated by the plaintiff-bank on the request of the defendants. All documents which were required to be

negotiated along with the irrevocable letter of credit were duly furnished to the plaintiff-bank and the plaintiff-bank negotiated the said documents

and had received the full payment of letter of credit from the Midland Bank Limited which was the nominated bank of Central Bank of Iraq (issuing

bank). It is not the case of the plaintiff-bank that the said Midland Bank had paid the amount of the letter of credit under some reserve. It is also

not the case of the plaintiff that, while paying the full amount of the letter of credit, the Midland Bank had expressed any doubt regarding the

documents not being in conformity with the terms of the irrevocable letter of credit. It is the admitted case in evidence that the defendant had come

to know even before presenting the documents to the plaintiff-bank that the issuing bank had, at the request of the consignee, sought amendment of

irrevocable letter of credit but the defendants had not agreed to any such amendment and it is explained by defendant No. 2, Bhupinder Singh,

coming as DW-2 that it was within the discretion of the defendants to accept any amendment to the irrevocable letter of credit and the defendants

had not agreed to any suggested amendment, as the defendants had already incurred a lot of expenses in procuring the goods which were to be

sent to the customer in Baghdad on the basis of the aforesaid letter of credit. It is admitted by DW-2 that, while presenting the documents to the

plaintiff-bank, it was not disclosed to the plaintiff-bank that any amendment of the irrevocable letter of credit had been sought by the issuing bank

to which the defendants had not agreed.

12. Learned counsel for the plaintiff has contended that the irrevocable letter of credit, on the face of it, indicated that the same was issued in the

name of State Bank of India and thus, it could be negotiated only through the State Bank of India and the plaintiff-bank had taken up the task of

negotiating the aforesaid letter of credit with other documents on a clear understanding with the defendants that, in case the plaintiff-bank was not

able to get the full amount of the said letter of credit, the defendants would reimburse the plaintiff-bank and, in this connection, letter exhibit P-17

was obtained from the defendants on April 24, 1976, itself. In this letter of indemnity, it is recorded that the plaintiff-bank was agreeing to negotiate

the said letter of credit with the other documents but, in case of any discrepancies being found including the fact that the letter of credit was

restricted to the State Bank of India, the defendants shall reimburse the plaintiff-bank and the documents were being negotiated at the risk and

responsibility of the defendants. A plea is sought to be taken in evidence that the words ""at our risk and responsibility"" were not there when

defendant No. 2 signed this document. It may be mentioned that a reference to the contents of this letter is already made in the plaint and, in the

written statement, there is no specific denial about the contents of the said letter and so it does not lie in mouth of the defendants to urge that any

words in this letter have been inserted at any later date. However, the question which needs to be decided is whether, after the documents were

negotiated by the plaintiff-bank and the plaintiff-bank had received the full amount of the letter of credit, the plaintiff was justified in returning the

amount to the Midland Bank ? The debt of the defendants stood exhausted the moment the plaintiff-bank had received the full amount in regard to

the letter of credit. The onus shifted on the plaintiff to prove that the plaintiff was justified in law in refunding the amount to the Midland Bank and is

entitled to recover the amount from the defendants. Apart from the pleas raised in the plaint that the Midland Bank had claimed the refund of the

amount on certain grounds already indicated above while giving the facts of the case, the plaintiff-bank had not led any evidence to prove that any

such ground had been raised by the Midland Bank for claiming refund of the amount. There is no evidence led by the plaintiff-bank to show that

the plaintiff-bank had obtained the consent of the defendants for refunding the said amount.

13. The ""uniform customs and practices for documentary credit"", to which reference has been made by both counsel in article 10 describes an

irrevocable credit"". It is mentioned that an irrevocable credit constitutes a definite undertaking of the issuing bank provided that the stipulated

documents are presented and that the terms and conditions of the credit are complied with. It is also mentioned in article 10(d) that the said

undertakings of the letter of credit can neither be amended nor cancelled without the agreement of the issuing bank, the confirming bank (if any)

and the beneficiary. There is no plea or evidence led in the case to show that the beneficiary, the defendants in the present case, had at any time

agreed to any amendment of the said irrevocable letter of credit. In article 11, it is provided that all credit must nominate the bank (nominated

bank) which is authorised to pay (paying bank) or to accept drafts (accepting bank), or to negotiate (negotiating bank), unless the credit allows

negotiation by any bank (negotiating bank). It also provides that, unless the nominated bank is the issuing bank or the confirming bank, its

nomination by the issuing bank does not constitute any undertaking by the nominated bank to pay to accept; or to negotiate. In article 16(d), it is

provided that, if the issuing bank decides to refuse the documents, it must give notice to that effect without delay by telecommunication or if that is

not possible, by other expeditious means to the bank from which it receives the documents (remitting bank) or to the beneficiary, if it received the

documents directly from him. Such notice must state the discrepancies on which the issuing bank refused the documents and must also state

whether it is holding the documents at the disposal of, or is returning them to, the presenter. In that situation, only the issuing bank shall be entitled

to claim from the remitting bank the refund of any reimbursement which has been made to that bank. Learned counsel for the defendant has

pointed out that there is no evidence in this case led by the plaintiff to show that the issuing bank had declined the documents in accordance with

the aforesaid provisions. He has pointed out that the documents were never returned to the beneficiary or to the plaintiff at any time. It is argued

that once the irrevocable letter of credit was negotiated validity, there was no occasion for the Midland Bank or for the issuing bank to decline to

honour the said letter of credit. A letter of credit may be not a negotiable instrument and it may be that when it is issued on a particular bank, only

that bank could negotiate the same but if the plaintiff-bank had taken the risk of negotiating it and had obtained the amount under the letter of credit

after due negotiation, it was not the responsibility of the plaintiff-bank to refund the amount to the Midland Bank on any ground whatsoever. Unless

and until it is shown that the documents accompanying the letter of credit were not in consonance with the terms of the letter of credit. Hence, I

must hold that the moment the full amount of the letter of credit was received by the plaintiff bank on the basis of the irrevocable letter of credit, the

transaction undertaken by the plaintiff bank with the defendants stood exhausted, and if the plaintiff bank had chosen to refund the whole of the

amount to the Midland Bank, it did so at its own risk and cost and thus, it cannot impose any liability on the defendants because there is no

evidence led to show that the defendants had at any time consented to the refund of the amount to the Midland Bank.

14. A contention was raised by learned counsel for defendant that the provisions of the Foreign Exchange Regulation Act, 1973, prohibit the

plaintiff-bank from returning the foreign exchange received by the plaintiff-bank under the irrevocable letter of credit without the permission of the

Reserve Bank of India. The plaintiff-bank is an authorised agent of the Reserve Bank of India. I have not been referred to any specific provisions

of the Foreign Exchange Regulation Act, 1973, or any rules or instructions issued there under, by learned counsel for the defendant in support of

his contention that refund of the amount by the plaintiff was not valid. So, it is not possible to hold that refund of the amount by the plaintiff-bank

was prohibited by any statutory provisions. As far as the suit of the plaintiff is concerned, even if it is held that it is within time in view of the letter

dated March 1, 1978, signed by defendant No. 2, even then as the letter of credit was never amended with the consent of defendants, the plaintiff-

bank cannot impose any liability on the defendants for the plaintiff's own fault in refunding the amount of the letter of credit to the foreign bank. The

defendants had undertaken to reimburse the plaintiff-bank by executing the indemnity letter if the plaintiff bank was forced to return the amount for

any good reason. In case the plaintiff-bank had been able to prove that the amount has been refunded on account of there being any difficulties in

negotiating the irrevocable letter of credit, the plaintiff-bank would have been within its rights to require the defendants to reimburse the plaintiff

bank regarding the said amount. Issues Nos. 2 and 5 are decided in favor of the plaintiff while Issue No. 4 is decided in favor of the defendants.



15. Issue No. 6. - Reliance has been placed on letter dated March 1, 1978, exhibit P-5, in order to prove that the defendants had agreed to pay

the balance amount of the loan after adjusting pounds 17,480.50. The relevant portion of the letter which has been relied upon is as follows :

We understand that the drawee is prepared to pay pounds 17,480.50 (seventeen thousand four hundred eighty and fifty) against the shipment for

Pounds 27,718. The party have written to you to say that the goods were injured when delivered to them and that the same should be replaced by

us. This is not acceptable to us as the letter of credit clearly stated that no insurance was required and that if the articles have been injured in

shipping transit between Bombay and Basrah it is not of any concern to us. However, to maintain good relations with your esteemed bank, we

authorize you to accept the payment of the above amount. The balance amount will be paid by us without interest in the following manner :-

(a) Rs. 10,000 immediately.

(b) Rs. 15,000 by the end of March, 1978.

(c) Rs. 24,000 by the end of April, 1978.

(d) Balance Rs. 10,000 per month.

16. It is urged by learned counsel for the plaintiff that, vide this letter, the defendants have admitted the liability and thus, it should be held that the

plaintiff-bank has accepted the above payment from the drawee with the consent of the defendants.

17. Learned counsel for defendants, on the other hand, has contended that the letter has been given by the defendants to enable the plaintiff-bank

to recover its dues from the drawee or from the foreign nominated bank and there being no consideration for executing this letter, the same is not

binding on the defendants. I have already held that the loan transaction in question stood exhausted as soon as the plaintiff-bank had received the

payment on the basis of the irrevocable letter of credit and the refund of the amount received by the plaintiff was on the plaintiff's own risk and the

liability of the defendants for the loan granted on the basis of the said letter of credit stood completely exhausted as soon as the amount was

received by the plaintiff-bank on the basis of the letter of credit. The letter of credit being irrevocable, there should be no occasion for the plaintiff-

bank to have refunded the amount to the foreign bank unless and until any objection had been raised by the foreign bank for entertaining the said

letter of credit on any legally available ground. The plaintiff-bank to have refunded the amount to the foreign bank for entertaining the said letter of

credit on any legally available ground. The plaintiff-bank failed to lead any evidence to prove as to on what basis the foreign bank had claimed

back the amount from the plaintiff-bank. It is evident that, if there was no liability existing in respect of the loan in question on March 1, 1978, as

held by me above, the execution of this letter, exhibit P-5, by the defendants would not impose any liability on the defendants as this letter has been

executed by the defendants gratuitously. In this very letter, the defendants have also mentioned as below :

We request you to take up the matter with the Central Bank of Iraq, Baghdad, for payment of the full amount and also to claim interest at 18%

from them. When you collect the interest, the same will be credited to yourselves.

18. In this very letter, the defendants have insisted upon the plaintiff-bank to recover the full amount from the foreign bank in the basis of the

irrevocable letter of credit negotiated by the plaintiff-bank. So, in view of the above discussion, I hold that the letter, exhibit P-5, could not have

received the liability of the defendants which stood exhausted as soon as the amount under the irrevocable letter of credit was received by the

plaintiff-bank and it is not proved that the plaintiff-bank had decided against the plaintiff.

19. Issues Nos. 8 and 10. - As I have already held that the plaintiff-bank cannot impose any liability on defendants Nos. 1 to 5 in respect of the

amount received on the basis of the letter of credit, obviously, defendant No. 6 who was a mere guarantor is also not liable to the plaintiff-bank for

any amount. Issue is decided in favor of defendant No. 6.

20. Issues Nos. 8, 9 and 10. - The letter dated March 1, 1978, has to be held to be without consideration because the moment the full amount of

the letter of credit was received by the plaintiff-bank, the liability of the defendants stood exhausted with regard to the amount given to the

defendants on the basis of the said letter of credit. Hence, the said liability which stood exhausted could not be revived by getting any letter from

defendants. So, these issues do not any more arise for consideration as I have given a finding that the plaintiff-bank is not entitled to recover any

amount from the defendants.

21. Issue No. 11. - In view of the finding given above, the suit is liable to be dismissed. I dismiss the suit but, in view of the peculiar facts, I leave

the parties to bear their costs.