State Bank of Mysore Vs Machado Computer Services and Bank of Maharashtra

Court: Bombay High Court (Goa Bench)

Date of Decision: April 30, 2009

Acts Referred: Sales of Goods Act, 1930 â€" Section 16, 31, 32, 41, 42

Citation: (2009) 4 BomCR 199 : (2009) 111 BOMLR 2481

Hon'ble Judges: R.S. Dalvi, J

Bench: Single Bench

Advocate: M.S. Usgaonkar and A. Razaq, for the Appellant; N. Sardessai, for the Respondent

Judgement

R.S. Dalvi, J.
This appeal challenges the order of injunction restraining the appellant bank from encashing a letter of Credit (LC) from the

respondent No. 3 bank pending the suit filed by the respondent No. 1 herein inter alia against the respondent Nos. 2, 3 and the appellant as the

defendant Nos 1,2 and 3 respectively. There were two letters of credit applied for by the plaintiff in the suit (the respondent No. 1 herein) from its

banker respondent No. 3. These have been discounted by the appellant bank. The appellant bank called upon the respondent No. 3 bank to make

payment in terms of the bill of exchange drawn by the respondent No. 2 and accepted by the respondent No. 1 under the transaction.

2. The transaction between the parties was the sale of certain computer parts which were delivered by the respondent No. 2 to the respondent

No. 1 and accepted by the respondent No. 1 upon taking inspection and stating that they were received in full and in satisfactory working

condition.

3. It is settled position in law that no injunction can be granted against enforcing or invocation of bank guarantees or letters of credit as these

documents ensure commercial expediency which cannot be jeopardised by injunction orders. The only exception for grant of injunction restraining

the enforcement of bank guarantees or letters of credit are the cases of fraud and irretrievable injury. Hence, the plaintiff in the suit was required to

show the Court either fraud or irretrievable injury in the contract of sale of goods under which the plaintiff would be required to make payment to

injunct the appellant bank who discounted the LC from enforcing it through the banker of the party who applied for the LC.

4. The entire documentary evidence is admitted and relied upon by both the parties. Precisely what transpired in this transaction would be clear

upon seeing the admitted documents. There have been two LCs applied for and got issued by the plaintiff in the suit. One was for Rs. 35 Lacs and

the other was for Rs. 45 Lacs. The dispute in the suit and consequently in this appeal from order is in respect of the second LC.

5. The application for an irrevocable inland letter of credit was made by the plaintiff in the suit on 11.02.2003. The application in the prescribed

form shows the name of the plaintiff as the applicant of the LC and the name of the supplier, who was required to be paid by the plaintiff, shown as

the beneficiary and who has been sued as the defendant No. 1. The amount of credit was not to exceed Rs. 45 Lacs available by the beneficiary''s

draft at 45 days usance from the date of delivery. It relates to four signed copies of commercial invoices describing the goods sold to the plaintiff.

The last date of dispatch is shown to be 28.2.2003. Th last date of negotiation of the documents is shown to be 10.3.2003, not later than 15 days

from the dispatch. The applicant agreed to keep the margin money and bear the issuing charges.

6. The letter of credit came to be opened on 17.2.2003. It shows the date of dispatch of the goods to be 28.2.2003 and of negotiation of letter of

credit to be 10.3.2003 in terms of the application. The letter of credit was to be enforced and negotiated and paid within 45 days from the date of

delivery. It mentions about the invoice and the description of the goods sold for an amount of Rs. 45 Lacs. It carried the confirmation of the

plaintiff''s banker (the respondent No. 3 herein) that the LC negotiated in conformity with the terms and conditions of the credit would be duly

honoured on presentation of the documents at maturity, the maturity being 45 days from the date of delivery and the negotiation being 10.3.2003

but not later than 10 days from the goods being dispatched.

7. The proforma invoice issued by the defendant No. 1 upon the plaintiff is dated 17.2.2003 for Rs. 44,95,500/-. On 17.2.2003 the defendant

No. 1 (the supplier) wrote to the appellant bank that they were inclusive the invoices of that date for Rs. 45 Lacs and stated that the bills were

drawn strictly in terms of the LC and were complete in all respects. The negotiation was to be at the risk and the responsibility of the company and

bills would be promptly paid by the drawees of the bill of exchange or the banker which opened LC, which was the purchaser''s (i.e. the plaintiff''s)

banker. The plaintiff further agreed irrevocably and unconditionally and undertook to make good to the appellant banker the losses and costs if the

drawers of the bill of exchange or the banker issuing the LC would not make payment upon the bills.

8. On 21.2.2003, the supplier issued its invoice for Rs. 44,95,500/-. Rs. 45 lacs were payable under the LC. The invoice was signed by the CEO

of the supplier upon it being issued and by the plaintiff showing receipt.

9. The delivery challan also dated 21.2.2003 was similarly signed by both the parties. The goods mentioned in the invoice were the same as in the

delivery challan. Those goods were certified to have been received in full and in satisfactory working condition. The delivery challan is signed by

the plaintiff on 21.2.2003 showing the delivery. Hence, the right of the buyer u/s 41 of the Sale of Goods Act (the Act) is availed of by the plaintiff.

Hence, the plaintiff is deemed to have accepted the goods upon such intimation of acceptor to the supplier as stated specifically in the delivery

challan. This acceptance is both for the quality as well as the quantity of the goods supplied as per Section 42 of the Act. Further upon such

acceptance after examination of the goods specifically accepted, the description of the goods as regards the make or the brand are also deemed to

have been accepted and there can be no defect stated to be in respect of such brand as per the 2nd proviso to Section 16 of the Act. The duty of

the supplier in the contract of sale is therefore, complete. The plaintiff has accepted the goods. The plaintiff is, therefore, required to make payment

for the goods accepted as per the enjoinment under Sections 31 and 32 of the Act.

10. Consequently, the bill of exchange came to be drawn by the defendant No. 1 on 17.2.2003 itself for the amount of the invoice being Rs.

44,95,500/- It was accepted by the plaintiff. The plaintiff''s liability as acceptor is the primary liability upon the bill of exchange for the value stated

therein. The due date for payment of the bill of exchange was 19.3.2003.

11. Since the goods were certified to be supplied in full and in good working condition, which reflected the contract of the sale of goods having

been properly executed, a transfer debit came to be issued by the appellant bank for the amount of the invoice being Rs. 44,95,500/- on

21.2.2003, the date of the delivery of the goods. A transfer credit came to be issued by the appellant on the same day crediting the supplier''s

account to the extent of Rs. 43,72,979/- upon deducting its discounting charges.

12. On 22.2.2003, the appellant bank wrote to supplier of the goods that there was some discrepancy in the bill of exchange which requires the

supplier to resubmit revised and corrected bill of exchange as per the letter of credit issued by the issuing bank (i.e. the plaintiff''s bank). The

discrepancy was in the number of days mentioned in the bill of exchange. Whereas the LC showed the period of 45 days credit being granted, the

bill of exchange dated 17.2.2003 executed along with the dispatch of goods showed the amount payable at 30 days for value received under the

supplier"s invoice. Consequently, the due date was shown to be 19.3.2003 which is 30 days after issuance of bill of exchange and not 45 days. It

may be mentioned that the correction of the bill of exchange would enure not for the benefit of the appellant bank, but for the issuing bank. The

issuing bank had the period of credit of 45 days under LC which it could have availed, but for the bill of exchange which was shown to mature 30

days after its execution.

13. Consequently to rectify/ revise and correct the bill of exchange drawn by the supplier and accepted by the plaintiff a fresh invoice dated

28.2.2003 came to be issued for the same amount and showing the same extent of the credit payable in 45 days. The delivery challan also dated

28.2.2003 for the same goods came to be once again signed by the plaintiff in the suit showing receipt of the goods in full and in satisfactory

working condition. The only result was that the period of credit came to be extended 45 days from 28.2.2003.

14. Hence, in terms of such document a fresh bill of exchange came to be drawn by the supplier and accepted by the plaintiff once again on

28.2.2003 showing that the bill of exchange was payable 45 days from the date of delivery mentioned therein for value received. Accordingly,

credit period was extended until 14.4.2003. The issuing bank was allowed credit until that date though the appellant bank had already discounted

the bill and credited the account of the supplier with entire amount deducting only the discounting charges.

15. The transaction thus came to be completed and the discrepancy came to be removed. It enured for the benefit only of the plaintiff and the

plaintiff"s banker who issued LC on behalf of the plaintiff. It granted further period of credit. It, in fact, prejudiced the appellant bank by having the

credit limit extended so that that payment, to that extent, was allowed to be delayed.

16. The appellant bank had already discounted the LC. Initially the LC was to be negotiated by 10.3.2003. On 10.3.2003 the appellant bank

wrote to the issuing bank to encash the LC showing that the bills were discounted. The bills were in order. The documents were in order. The due

date was 14.4.2003. The appellant bank requested the issuing bank to make payment and honour the LC accordingly.

17. On the next day i.e. on 11.3.2003 the issuing bank confirmed that the documents were in order and accepted the LC for the payment on the

due date. It stated that the payment would be made on due date direct to the appellant bank as per their letter dated 10.3.2003.

18. Barely 4 days before the due date both the supplier and the buyer as also the issuing bank are shown to have written letters which are rather

surprising and completely at variance with the duly executed contract for the sale of goods.

19. On 10.4.2003 the supplier wrote to the plaintiff in the suit informing the plaintiff that they regretted very much for not supplying the computer

system as per the specifications against the plaintiff''s order. They also admitted that they were unable to supply the system as per their invoice and

the plaintiff''s order in time. (This was stated after the supply was actually effected.) They agreed to extend the LC of 45 Lacs which would fall due

on 14.4.2003 for another 45 days to 29.5.2003. They stated that they had spoken to their banker who had agreed to the extension. They assured

that they will supply the system as per the plaintiff''s specifications and bear the expenses of the delivery as well as additional charges. However,

they stated that the costs relating to extension of the LC would be on account of the plaintiff.

The letter does not show any complaint by the buyer of the goods relating to non-supply or non-delivery of the goods. The letter is rather

peculiarly worded. From the inception it shows regret put up on record by the supplier of the goods themselves. It admits the non-delivery of the

goods specifically contracted and accepts the liability for the same. This is after the supplier''s account has been credited by the appellants with the

price of the goods, less only the discounting charges of the appellant. The letter shows that the supplier agrees to extend the letter of credit and that

their bankers have agreed to the extension but states that the costs of the extension would be borne by the buyer. This letter does not show under

what circumstances it came to be issued. It only speaks about the non-delivery of specified goods. It may be mentioned that the goods were

delivered on 21.2.2003 itself and were certified to be received in full as also in good working condition. That would show the inspection taken of

the delivery made by the buyer u/s 41 of the Act showing that the goods supplied conformed with the contract specifications.

20. On the same day itself i.e. 10.4.2003 the buyer (the plaintiff in the suit) wrote to their bankers, being the issuing bank, informing them that the

computer systems supplied by the supplier were not as per the specifications, that they were not of HCL brand or ISO 9001 systems, they were

not approved by the Government Department Officials and hence, were returned back as not acceptable.

The case made out by the plaintiff in the suit is, therefore, that the goods did not conform to the description mentioned in the invoice and the

delivery challan and hence, were rejected. Hence, the case of non-acceptance of the goods upon their not conforming to the description was

sought to be made out. This was despite the plaintiff having availed of the rights of the buyer u/s 41 of the Act and its consequent acceptance of the

goods contemplated to be sold as per Section 42 of the Act and its statutory liability to make payment u/s 31 and 32 of the Act.

As such the letter also mentioned that the supplier accepted that contention and had issued a delivery return note for the same. The covering letter

was also issued to explain the note and that they had requested for extension of the LC by another 45 days. The letter further mentioned that if the

supplier would not deliver the computer systems within 10 to 15 days as per the plaintiff"s specifications, the plaintiff would cancel the LC.

It may be mentioned that the LC was already discounted. The appellant bank had already issued the transfer credit and transfer debit in respect of

the LC since 21.2.2003 and had negotiated the LC on the initial due date which had long since passed.

21. On 10.4.2003 itself the supplier wrote to the appellant bank also that they had discounted the bill under the letter of credit for Rs. 45 lacs

issued by the issuing bank on behalf of the plaintiff in the suit. The due date of the LC was 14.4.2003 for payment. There was delay in supply of

goods referred to in the LC and extension of the period of the LC for further 45 days was requested. The plaintiff was stated to have consented to

the extension of the LC. The supplier undertook to bear the costs of the extension.

It is interesting to note that whereas in the letter of supplier dated 10.4.2003 to the plaintiff regarding the non supply and their inability to supply

and agreeing to extend the date of the LC, they stated to the plaintiff in the suit that the costs of the extension of the LC would be on account of the

plaintiff, in their letter of the same date issued to the appellant bank they undertook to bear the costs of the extension requested by them from the

appellant bank.

22. On the next day, i.e. on 11.4.2003, the issuing bank informed the appellant bank that they had received the letter from the drawee of the bill of

exchange (the plaintiff in the suit) stating that the drawer (the supplier of the goods) had agreed to extend the LC by 45 days for payment. It also

enclosed the letter from the supplier agreeing to extend the period of payment. The issuing bank accordingly, requested the appellant bank to

confirm their agreement for extension of the LC till 29.5.2003.

23. On 15.04.2003, the appellant bank wrote to the issuing bank agreeing to extend the payment only by 7 days and requested the issuing bank to

make payment on 22.4.2003.

Hence, the LC which was shown to be due on 14.4.2003 was allowed to be extended by one more week. On 22.4.2003, the further due date of

the LC, the supplier wrote to the appellant bank requesting extension for 10 days from that date and assuring that the payment would be made on

the extended due date without seeking further extension of time.

24. On 22.4.2003 itself the appellant bank wrote to the issuing bank that they agreed to extend the payment further by 10 days and requested the

issuing bank to make payment of the LC on 2.5.2003. No payment was made on 2.5.2003 by the issuing bank (the plaintiff"s bankers).

25. On 5.5.2003 the appellant bank wrote to the issuing bank that the LC was due for payment. The LC was confirmed by the issuing banker

earlier. They requested the payment immediately as per the Negotiation Instruments Act. No payment was made by the issuing bank. The liability

was not denied. No extension was sought by any party.

26. On 13.5.2003, the issuing bank wrote to the appellant bank that the plaintiff had filed a suit and obtained the order of injunction restraining the

issuing bank from disbursing any amount under the LC.

27. It can be seen from the aforesaid events reflected from the admittedly executed documents between the parties including their own

correspondence that the appellant bank had discounted the LC as per its terms. The appellant bank was required to be made payment of the LC

by the issuing bank. The bill of exchange also came to be issued showing the admitted liability of the drawer and the acceptor thereunder.

However, the bill of exchange showed that it was payable within 30 days from its execution, whereas the LC was payable within 45 days from its

execution. The appellant bank itself, in good faith, got the discrepancy in the bill of exchange removed to grant the period of credit of 45 days

rather than 30 days. Despite the discrepancy, the appellant bank did not insist that the LC could grant credit only for the lesser period of time. It

allowed the extension of the credit period in the bill of exchange. It is unfortunate that it has been contended by the Advocate for the respondent

No. 1 that this discrepancy shows fraud on the part of the appellant bank which entitles the plaintiff in the suit to obtain the order of injunction

against encashing the LC. The argument is completely misconceived. The fraud, if any, has to be shown on the part of the supplier as would not

entitle him to receive the payment guaranteed and undertaken to be made through the relevant bankers upon the contract of delivery of goods.

Rather than showing any fraud on the part of the appellant bank, by the correction of the discrepancy the bonafide act on their part alone is shown.

28. In fact it is seen from the aforesaid documents more specially by the aforesaid three letters dated 10.4.2003 written by the supplier to the

plaintiff and the issuing bank and the supplier to the appellant bank stating diametrically different facts relating to non-supply and non-acceptance of

the goods. These letters were issued well after the appellant bank discounted the bill of exchange on the due date and before the extension

requested upon those contradictory grounds came to be granted by the appellant bank.

29. The further correspondence shows that the appellant bank extended the period of credit initially by 7 days and then by 10 days. It demanded

payment well after the second date of extension. It is only when the appellant bank insisted upon the payment that the plaintiff sued. Much,

therefore, can be said about the collusion on the part of the plaintiff in not making the payment for the goods delivered in full and in satisfactory

working condition with the supplier after the contract of sale of goods was complete and the LC was discounted. The issuing bank, as enjoined

legally, was to make payment to the appellant bank which was confirmed by it since 11.3.2003 in their letter to the plaintiff bank. The issuing bank

desisted from making payment upon the request of the supplier of the goods as well as the plaintiff in the suit which was in turn requested by the

issuing bank from the appellant bank. The appellant bank having not granted any further time, the amount on the confirmed LC was due and

payable under Negotiable Instruments Act forthwith since the LC had already matured for payment. Much, therefore, can be said of the act of the

plaintiff in suing for injunction. Under the settled law the Courts cannot do precisely what has been done in the impugned order which would put a

premium upon the default of the buyer of goods who confirmed having received the goods in full and in good working condition and yet did not

allow the bank which had already discounted its LC to be paid on the due date of the LC.

30. One of many judgments laying down the settled law has been relied upon by the appellant bank. The case of Federal Bank Ltd. v. V.M. Jog

Engineering Ltd. reported in 2001(1)SCC 663 is rather clear - in the case of invocation of bank guarantee or LC, the Court should not injunct

encashment on the ground of breach of contract as the contract of bank guarantee or LC is independent of the main contract. It has been

specifically laid down that the bank cannot refuse encashment if the seller prima facie complies with the terms of the LC or the bank guarantee. The

only exception is the case of fraud or irretrievable damage. That has to be the fraud practiced by the supplier which would entitle the buyer not to

make payment as per the terms of the contract since such a contract would be vitiated by such fraud and such a contract may cause such damage

to the buyer which may become irreversible or irretrievable. The concept of ""fraud or irretrievable damage"" has nothing to do with the act of the

discounting or presenting bank which has to be paid by the bank issuing the bank guarantee or the LC. Even in such case, the fraud (as between

the supplier and the buyer) has to be proved to be to the knowledge of the bank. If the presenting bank was holder in due course, the bank

guarantee or LC would have to be honoured even if the document was tainted by fraud.

31. The contract of sale in this case is the second such contract between the parties - the first being for Rs. 35 Lacs - which has not been in

dispute. Similar computer parts were, therefore, sold by the supplier to the plaintiff in the suit. The parties knew the description of the goods to be

supplied. The specifications are shown in the invoice as well as the delivery challan. (Much later the plaintiff contending that the brand of goods

required by the plaintiff was not applied). They were certified as to quantity as well as quality. Because of and pursuant to such certification only

the LC was discounted by the appellant bank. The account of the supplier was credited less only the discounting charges. Hence the supplier was

paid in full. The buyer was given credit of 45 days. After 45 days and two further extensions, the buyer''s bank which issued the LC was to debit

the buyer''s account and repay the appellant bank. Under a scheme made out in collusion between the supplier and the buyer after much water had

flown, the certification was reversed. This, in fact, shows a fraud practiced by the buyer and the supplier colluding with one another to deprive the

appellant bank of the repayment assured. The issuing bank, in fact, allowed such a collusion to prevail by not honouring the LC despite its express

confirmation since 11.3.2003.

32. It need hardly be mentioned that such acts of collusive fraud can be perpetrated and encouraged by orders of injunction in the transaction of

the LC which is distinct from the transaction of the sale of goods. Hence, the settled law enjoins the Courts to refrain from granting injunctions. The

effect of such injunctions would paralyse trade and commerce. The very purpose of a party ""guaranteeing"" payment through its bank (by the bank

guarantee which is the same in effect as LC) would be nullified if even a bank would not make payment upon maturity, whatever be the case of the

parties to the contract of sale of goods. The Courts would lend support to such defaulting or at times even colluding parties by orders of injunction.

33. The order of injunction is, therefore, seen to be a wholly illegal order. Unfortunately, upon admission of this appeal and the consequent stay,

the LC has remained to be encashed since 2.5.2003. The observations of the learned Judge in the impugned order that upon the scrutiny of the

case of the plaintiff and the defendant, the documentary evidence produced by the plaintiff appears to be genuine and from it a prima facie case is

made out is rather esoteric. Counsel on behalf of the parties drew my attention to each of the documents with regard to the suit LC from the time

of the application for the LC by the plaintiff in the suit on 11.2.2003 until the invocation of the LC by the appellant bank ultimately on 5.5.2003 and

its non-payment by the issuing bank because of the plaintiff''s suit and resultant injunction order dated 29.3.2005.

34. The impugned order dated 29.3.2005, therefore, cannot be sustained. The impugned order is set aside. The injunction is vacated.