



\$~P-1

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Decided on: 28.02.2025

+ **CS (OS) 930/2000**

KANNU EXPORTS

.....Plaintiff

Through: Mr. Ashish Batra, Advocate

versus

BANQUE NATIONALE DE PARIS
SUISSE) SA, AND ORS.

.....Defendants

Through: Mr. Deepak Nargolkar, Senior
Advocate with Mr. Viraj Kadam,
Advocate for D-1.

Mr. H.S. Dahiya & Mr. Yuv
Dahiya, Advocates for D-2.

Mr. Ajoy Roy, Ms. Aishani Das,
Mr. Aayush Kevlani, Ms.
Balapragatha & Mr. Shashvat
Chandra, Advocates for D-4.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

JUDGMENT

1. This is a suit for recovery of Rs. 5,23,49,757/-, alongwith interest at the rate of 20% per annum, based on an irrevocable Letter of Credit [hereinafter, "L/C"] opened by defendant No. 1-bank in favour of the plaintiff.

I. The parties

2. The plaintiff is an exporter/importer of commodities, and is the beneficiary of the L/C.



3. The following four defendants were originally impleaded in the suit, and the decree was sought against them jointly and separately:

- Defendant No. 1 – Banque Nationale De Paris (Suisse), being the bank which issued the L/C.
- Defendant No. 2 – State Bank of Mysore, being the negotiating bank, to which the plaintiff submitted the L/C.
- Defendant No. 3 – State Bank of Indore, being the advising bank under the L/C.
- Defendant No. 4 – Gyma International, being the purchaser of goods from the plaintiff, at whose instance the L/C was opened.

4. Defendant no. 3, which was the advising bank, was deleted by an order dated 31.01.2006. At the stage of final arguments, it was recorded, in an order dated 14.11.2024, that the plaintiff seeks a decree in this suit only against defendant No. 1. In terms of the aforesaid order, the plaintiff filed an affidavit dated 21.11.2024, confirming that it is not pressing the suit against other defendants, i.e. defendant Nos. 2 and 4.

II. Case of the plaintiff

5. The case pleaded in the plaint is that the plaintiff had entered into an agreement to export rice to defendant no. 4, a French entity. The payment was to be made under an irrevocable L/C bearing Documentary Credit No. 98-404200/MC dated 17.08.1998 for a sum of USD 3,29,808/-. The plaintiff exported the rice to defendant No. 4 through five separate bills of lading, details whereof are as follows:



| S. No. | Particulars | Exhibit No. |
|--------|--|-------------|
| 1. | Bill of Lading No. 1 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. | Ex. PW1/7 |
| 2. | Bill of Lading No. 2 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. | Ex. PW1/8 |
| 3. | Bill of Lading No. 3 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. | Ex. PW1/9 |
| 4. | Bill of Lading No. 4 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. | Ex. PW1/10 |
| 5. | Bill of Lading No. 5 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. | Ex. PW1/11 |

6. The documents were submitted by the plaintiff to defendant No. 2, which was the negotiating bank, and from whom the plaintiff had taken an advance against the corresponding export bills. Defendant No. 2 accepted the documents, and forwarded them to defendant No. 1 by telex message



dated 23.11.1998, which was acknowledged by defendant No. 1 on 25.11.1998.

7. On 26.11.1998, however, defendant No. 1 raised the following discrepancies:-

- “1) ALL DOCUMENTS SHOW YOUR L/C NUMBER.
- 2) B/L NO. 1 THE MENTION “NO LIEN TO BE EXERCISED AT DISCHARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT” IS NOT COUNTERSIGNED BY THE MASTER.
- 3) PHYTOSANITARY CERTIFICATES DO NOT CERTIFY THAT GOODS ARE FIT FOR HUMAN CONSUMPTION.”

Defendant No. 1, therefore, asserted that the claim was “*not taken into consideration as documents are not in strict conformity*”. The documents were therefore refused, and the L/C remained unpaid.

8. Defendant No. 2 clarified the alleged discrepancies by telex messages dated 27.11.1998 and 01.12.1998, but the documents were nonetheless rejected by defendant No. 1 on 02.12.1998.

9. Following the refusal of defendant No. 1 to pay under the L/C, the plaintiff sold the subject consignment to alternative buyers between 16.12.1998 and 09.06.1999. According to the plaintiff, these sales were distress sales; the plaintiff recovered a sum of Rs. 10,15,11,135/-, thus incurring a loss of Rs. 3,83,88,516/-, as against the amount payable under the L/C. It is further contended that the aforesaid amount had to be repaid to defendant No.2 with interest at the rate of 20% per annum with effect from 09.12.1998, as a result of which the plaintiff ultimately paid a sum of Rs. 5,23,49,757/- to defendant No. 2 to foreclose the transaction.

10. The plaintiff therefore filed the present suit for the following reliefs:-

“That accordingly under the facts and circumstances of the present case it is most respectfully prayed that your Lordship may be pleased to pass a decree in favour of the plaintiff and against the defendants



Nos. 1, 2 and 4 jointly as well as severally thereby directing them to pay to the plaintiff a sum of Rs. 5,23,49,757/- alongwith interest @ 20% p.a. till the realisation of the whole amount.”

III. Case of the defendants

11. The written statement filed by defendant No. 1 raised preliminary issues as to the jurisdiction of the Court, and on the ground that the purchaser to whom the consignment was ultimately sold was not impleaded as a defendant. A plea of multifariousness and misjoinder of causes of action was therefore taken.

12. On merits, defendant No. 1 asserted that the documents were discrepant on the grounds taken in the communications between the parties, which have been noticed in paragraph 7 above.

13. As the suit is pressed only against defendant No. 1, it is not necessary to consider the written statements filed by the other defendants.

IV. Issues framed

14. On the basis of the pleadings, the following issues were framed by an order dated 23.09.2008:-

- “1. Whether the plaintiff is entitled to recover Rs. 5,23,49,757/-, if so from which of the Defendants? OPP*
- 2. If the issue no. 1 is decided in favour of the Plaintiff, whether the Plaintiff is entitled to any interest and if so, at what rate, for what period and from which of the Defendants? OPP*
- 3. Whether this Court has no territorial jurisdiction to entertain the suit against the defendants no. 1 & 4? OPD – 1 & 4.*
- 4. Relief.”*

It may be noted that these are the only issues framed in the suit, and no issue has been framed with regard to any other preliminary objection taken in the written statement of defendant No. 1.

**V. Evidence**

15. The plaintiff examined one witness, being its authorised representative, Sh. Ram Lal [PW-1]. The witness filed an affidavit of evidence dated 29.05.2010, which was tendered on 14.09.2012, and marked as EX PW-1/A. PW-1 was cross examined by learned counsel for defendant Nos. 1, 2 and 4.

16. Forty three documents were exhibited in the evidence of PW-1, being the following:-

| Exhibit No. | Particulars |
|--------------------|---|
| Ex. PW1/1 | Letter of Credit dated 17.08.1998 bearing No. 98-404200/MC, alongwith amendments issued by defendant No. 1 in favor of the plaintiff. |
| Ex. PW1/2 | True and certified copy of Commercial Invoice No. EXP-1114/98 dated 17.08.1998. |
| Ex. PW1/3 | True and certified copy of Commercial Invoice No. EXP-1114A/98 dated 17.08.1998. |
| Ex. PW1/4 | True and certified copy of Commercial Invoice No. EXP-1114B/98 dated 17.08.1998. |
| Ex. PW1/5 | True and certified copy of Commercial Invoice No. EXP-1114C/98 dated 17.08.1998. |
| Ex. PW1/6 | True and certified copy of Commercial Invoice No. EXP-1114D/98 dated 17.08.1998. |
| Ex. PW1/7 | True and certified copy of Bill of Lading No. 1 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. |
| Ex. PW1/8 | True and certified copy of Bill of Lading No. 2 dated 15.11.1998 released in respect of shipment |



| | |
|------------|---|
| | in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. |
| Ex. PW1/9 | True and certified copy of Bill of Lading No. 3 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. |
| Ex. PW1/10 | True and certified copy of Bill of Lading No. 4 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. |
| Ex. PW1/11 | True and certified copy of Bill of Lading No. 5 dated 15.11.1998 released in respect of shipment in terms of agreed terms and conditions between plaintiff and defendant No. 4 and in terms of L/C. |
| Ex. PW1/12 | True and certified copy of Mate's Receipt No. 1 dated 15.11.1998 in respect of B/L No. 1. |
| Ex. PW1/13 | True and certified copy of Mate's Receipt No. 2 dated 15.11.1998 in respect of B/L No. 2. |
| Ex. PW1/14 | True and certified copy of Mate's Receipt No. 3 dated 15.11.1998 in respect of B/L No. 3. |
| Ex. PW1/15 | True and certified copy of Mate's Receipt No. 4 dated 15.11.1998 in respect of B/L No. 4. |
| Ex. PW1/16 | True and certified copy of Mate's Receipt No. 5 dated 15.11.1998 in respect of B/L No. 5. |
| Ex. PW1/17 | True and certified copy of Boat Notes, issued by boat owners and stamped by Customs Department, showing loading of cargo from 20.08.1998 to 14.11.1998. |
| Ex. PW1/18 | True and certified copy of Certificate of Kakinada Boat Suppliers dated 25.11.1998. |



| | |
|------------|---|
| Ex. PW1/19 | True and certified copy of Certificate of origin as issued by Delhi Chamber of Commerce in respect of B/L No. 1. |
| Ex. PW1/20 | True and certified copy of Certificate of origin as issued by Delhi Chamber of Commerce in respect of B/L No. 2. |
| Ex. PW1/21 | True and certified copy of Certificate of origin as issued by Delhi Chamber of Commerce in respect of B/L No. 3. |
| Ex. PW1/22 | True and certified copy of Certificate of origin as issued by Delhi Chamber of Commerce in respect of B/L No. 4. |
| Ex. PW1/23 | True and certified copy of Certificate of origin as issued by Delhi Chamber of Commerce in respect of B/L No. 5. |
| Ex. PW1/24 | True and certified copy of Phytosanitary Certificate No. 696 dated 10.09.1998, issued by the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture, Government of India. |
| Ex. PW1/25 | True and certified copy of Phytosanitary Certificate No. 760 dated 24.09.1998, issued by the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture, Government of India. |
| Ex. PW1/26 | True and certified copy of Phytosanitary Certificate No. 761 dated 24.09.1998, issued by the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture, Government of India. |
| Ex. PW1/27 | True and certified copy of Phytosanitary Certificate No. 762 dated 24.09.1998, issued by the Directorate of Plant Protection, Quarantine |



| | |
|------------|--|
| | and Storage, Ministry of Agriculture, Government of India. |
| Ex. PW1/28 | True and certified copy of Phytosanitary Certificate No. 833 dated 13.11.1998, issued by the Directorate of Plant Protection, Quarantine and Storage, Ministry of Agriculture, Government of India. |
| Ex. PW1/29 | True and certified copy of the certificate bearing No. 5301/08/009612 dated 18.11.1998 in respect of B/L No. 1, alongwith its annexures namely the Phytosanitary certificate, fumigation certificate and inspection report of Vessels Holds Cleanliness as received from the defendant No. 2-Bank. |
| Ex. PW1/30 | True and certified copy of the certificate bearing No. 5301/09/009613 dated 18.11.1998 in respect of B/L No. 2, alongwith its annexures namely the Phytosanitary certificate, fumigation certificate and inspection report of Vessels Holds Cleanliness as received from the defendant No. 2-Bank. |
| Ex. PW1/31 | True and certified copy of the certificate bearing No. 5301/09/009614 dated 18.11.1998 in respect of B/L No. 3, alongwith its annexures namely the Phytosanitary certificate, fumigation certificate and inspection report of Vessels Holds Cleanliness as received from the defendant No. 2-Bank. |
| Ex. PW1/32 | True and certified copy of the certificate bearing No. 5301/09/009615 dated 18.11.1998 in respect of B/L No. 4, alongwith its annexures namely the Phytosanitary certificate, fumigation certificate and inspection report of Vessels Holds |



| | |
|------------|--|
| | Cleanliness as received from the defendant No. 2-Bank. |
| Ex. PW1/33 | True and certified copy of the certificate bearing No. 5301/09/009616 dated 18.11.1998 in respect of B/L No. 5, alongwith its annexures namely the Phytosanitary certificate, fumigation certificate and inspection report of Vessels Holds Cleanliness as received from the defendant No. 2-Bank. |
| Ex. PW1/34 | True and certified copy of message dated 17.11.1998 by plaintiff to defendant No. 4 detailing the shipment for insurance purposes. |
| Ex. PW1/35 | True and certified copy of letter dated 19.11.1998 by plaintiff to defendant No. 2, including documents for the purposes of negotiation of the L/C. |
| Ex. PW1/36 | True and certified copy of telex dated 23.11.1998 by defendant No. 2 to defendant No. 1 forwarding documents against L/C. |
| Ex. PW1/37 | True and certified copy of telex dated 25.11.1998 by defendant No. 1 to defendant No. 2 acknowledging Telex dated 23.11.1998. |
| Ex. PW1/38 | True and certified copy of telex dated 26.11.1998 by defendant No. 1 to defendant No. 2 rejecting the claim. |
| Ex. PW1/39 | True and certified copy of telex dated 27.11.1998 by defendant No. 2 to defendant No. 1 clarifying the alleged deficiencies. |
| Ex. PW1/40 | True and certified copy of telex dated 01.12.1998 by defendant No. 2 to defendant No. 1 requesting for honouring the L/C. |



| | |
|---|--|
| Ex. PW1/41 | True and certified copy of telex dated 02.12.1998 by defendant No. 1 to defendant No. 2 informing rejection of documents. |
| Ex. PW1/42 | True and certified copy of certificate dated 30.06.1999 issued by defendant No. 2 regarding sale of cargo at a loss of Rs 3,83,88,516 attracting interest @ 20% p.a. |
| Ex. PW1/43 [Wrongly exhibited as Ex PW1/45] | True and certified copy of certificate dated 28.09.2005 issued by defendant No. 2 confirming payment of Rs 5,23,49,757/- by plaintiff. |

17. The defendants did not lead any oral evidence. The statements of learned counsel for defendant No. 1, 2 and 4 to this effect were recorded on 03.04.2014.

VI. Analysis

18. I have heard Mr. Ashish Batra, learned counsel for the plaintiff, and Mr. Deepak Nargolkar, learned Senior counsel for defendant No.1. Their arguments, and judgments cited by them, are discussed under each of the issues separately.

A. *Issue No. 3*

19. Issue no. 3 is taken up for consideration first, as it deals with the jurisdiction of this Court.

20. In support of the challenge to jurisdiction, Mr. Nargolkar submitted that defendant No. 1 is an international bank with its office in Switzerland. The transaction in question did not involve its branch in Delhi, and the Court's jurisdiction under Section 20(a) of Code of Civil Procedure, 1908 ["CPC"] was therefore not attracted. He also submitted that the L/C was issued by defendant No. 1 in Switzerland, and the documents submitted by



the plaintiff were examined in Switzerland, which is also where the L/C was rejected. The obligation to pay under the L/C was also referable to the location of defendant No. 1 in Switzerland. He therefore submitted that Switzerland therefore had the most real connection with the contract comprised in the L/C, and no part of the cause of action arose within the jurisdiction of this Court, as required by Section 20(c) of the CPC.

21. Mr. Nargolkar also relied upon Article 2 of the Uniform Customs and Practice for Documentary Credits (1993 revision) (UCP 500) [hereinafter, "UPCDC"], which states as follows:-

"Article 2. Meaning of Credit

For the purposes of these Articles, the expressions "Documentary Credit (s)" and "Standby Letter(s) of Credit" (hereinafter referred to as "Credit (s)"), mean any arrangement, however named or described, whereby a bank(the "Issuing Bank") acting at the request and on the instructions of a customer (the "Applicant") or on its own behalf,

i) is to make a payment to or to the order of a third party(the "Beneficiary"), or is to accept and pay bills of exchange(Draft(s)) drawn by the Beneficiary, or

ii) authorises another bank to effect such payment, or to accept and pay such bills of exchange(Draft(s)), or

*iii) authorises another bank to negotiate, against stipulated document(s), provided that the terms and conditions of the Credit are complied with. **For the purposes of these Articles, branches of a bank in different countries are considered another bank.**"¹*

Mr. Nargolkar submitted that Article 2 of the UPCDC specifically provides that branches of a bank located in different countries are to be treated as different banks for the purposes of UPCDC.

¹ Emphasis supplied.



22. In response, Mr. Batra first submitted that an application filed by defendant No. 4, under Order 7 Rule 11 of CPC [I.A. 9339/2001], which included the question of jurisdiction, was dismissed by the order of this Court dated 31.01.2006.

23. Without prejudice to the above, Mr. Batra submitted that this Court has jurisdiction, as the defendant No. 1 has its sole office in India at New Delhi. While this is sufficient for the purposes of Section 20(a) of CPC, Mr. Batra also submitted that part of the cause of action arose within the jurisdiction of this Court. He relied upon a Division Bench decision of this Court in a similar suit, concerning the defendant No. 1 itself, *viz. Banque Nationale De Paris v. Globus Agronics Ltd*². Mr. Batra also handed up to the Court, a printout from the portal of the Supreme Court to show that SLP(C) 11891/1999, filed by defendant No. 1 herein against the aforesaid judgment of the Division Bench, was dismissed on 27.08.1999.

24. Examining the issue first from the perspective of accrual of cause of action, the plaintiff has pleaded³ that the L/C was received by the plaintiff at New Delhi, tested and verified at the New Delhi branch of defendant No. 1, and also stamped by it. This has also been stated in evidence by PW-1 in paragraph 47 of his affidavit in evidence, and PW-1 was not cross-examined on this point. The documents to be submitted by the plaintiff were also submitted to defendant No. 2 within the jurisdiction of this Court, and the communications between defendant Nos. 1 and 2 were carried out by defendant No. 2 in New Delhi.

² (1999) 50 DRJ 623 [hereinafter, "*Globus Agronics*"].

³ Paragraph 31 of the plaint.



25. Although I have proceeded on the basis that the jurisdictional issue [Issue No. 3] survived for decision on evidence, despite the order in I.A. 9339/2001, it may be noted that the defendants have not led any evidence, so as to discharge the burden placed upon them with regard to this issue.

26. The judgments of this Court, on facts similar to the present case, also support the plaintiff's position on jurisdiction.

27. The claim in *Globus Agronics*, to which defendant No.1 herein was a party, was also based upon an L/C issued by defendant No. 1 herein, in connection with a contract for sale of goods. On an objection as to jurisdiction of this Court, the Division Bench, relying upon Article 2 of UCD 500, held as follows:-

“Bare perusal of the Letter of Credit, which is the basis of the suit shows that the documentary credit was made available assuring payment at the counter of respondent No. 2 (defendant No. 1) at New Delhi on presentation of the documents. Admittedly, after exports were effected and the documents were presented by respondent No. 1 at Delhi which were found in accordance with the Letter of Credit. The amount was payable in Delhi. Under clause (c) of Section 20 of the Code suit can be instituted in a Court within the local limits of whose jurisdiction the cause of action wholly or in part arises. In terms of the Letter of Credit the money was payable in Delhi though the Letter of Credit was executed outside the jurisdiction of this Court. Consequent to the Letter of Credit, the seller exported the agreed quantity of "Fermentation Ethanol" to the seller. Therefore, a part of cause of action had arisen within the territorial jurisdiction of this Court. The expressions to the "advising bank" and "confirming bank" under UCP 500 are not at all relevant to decide the issue of territorial jurisdiction of this Court qua the appellant which is admittedly the "issuing bank".....”⁴

⁴ Emphasis supplied.



28. In the present case also, the L/C was addressed by defendant No. 1 to State Bank of Indore [original defendant No. 3] at its office in Delhi. As in the judgment cited above, it was stated to be “*payable at site at your counters*”, i.e. in New Delhi. The plaintiff has asserted, and it was not controverted, that the L/C was received by it in New Delhi and was tested and verified by the New Delhi branch of defendant No. 1. A stamp to that effect appears on the face of the L/C itself.

29. It may be mentioned that Mr. Nargolkar sought to rely upon a judgment of a coordinate bench dated 08.05.2012 in *Tata Motors Ltd. v. JSC VTB Bank Ltd.*⁵, which was referred to in a compilation filed by defendant No. 4. However, he withdrew reliance upon the said judgment, in view of the fact that the Division Bench, by its judgment dated 21.02.2013 in *Tata Motors Limited v. JSC VTB Bank*⁶, had reversed the aforesaid judgment. A Special Leave Petition⁷ was filed challenging the view taken by the Division Bench, but the Supreme Court declined special leave to appeal, observing that the High Court was right in holding that the courts at Delhi have territorial jurisdiction to entertain the suit.

30. The Division Bench, in *Tata Motors Limited*, considered the effect of Article 3 of the UCD 600, which corresponds to Article 2 of the UCD 500, in the following terms:-

“....Article 3 of UCP 600 requires it to be treated that each branch of a bank in a different country is a separate branch. **But the same has to be limited for the purpose of 'documentary credits' and not to make branches of a bank separate entities in all respect. It is settled law that the juristic entity is the Corporation and not its branch.** Issues pertaining to jurisdictions, vesting Courts with the authority

⁵ (2012) 130 DRJ 142.

⁶ (2013) 200 DLT 115 (DB) [hereinafter, “*Tata Motors Limited*”].

⁷ SLP(C) 24607-24608/2013.



*to entertain suits, and the law pertaining to territorial jurisdiction has not to be confused with the concept of juristic entities and likewise, provisions dealing with documentary credits and the deeming effect thereof, which is limited to documentary credits, cannot be expanded to other areas. **Article 3 of UCP 600 is a mere enabling provision which allows the same bank's branch offices in different countries to perform additional roles in a documentary credit.** For example, branch at place 'X' of bank 'A' can act as an advising bank and the branch at place 'Y' of the same bank 'A' can act as a confirming bank for the same documentary credit. **Without this interpretative provision in Article 3 of UCP 600, which we find was in fact introduced in UCP 500, this could not be done. It was meant to facilitate the same juristic bank to perform two roles at its two different branches because this is the necessity in international transactions.***

30. We simply highlight that the official ICC Commentary clarifies the aforesaid in the following words : -

*"It is often the case that the branches of the same bank in different countries are involved in the same documentary credit transaction. **Through the use of the term 'separate banks', this interpretation makes it clear that for purposes of these rules these branches of banks should be treated as separate banks.**"⁸*

31. These judgments thus clarify that Article 2 of UCP 500 is not relevant for the purposes of determining the territorial jurisdiction of this Court. Defendant No. 1 clearly has a branch office within the jurisdiction of this Court, and therefore is deemed to carry on business within jurisdiction.

32. For the aforesaid reasons, I hold that this Court has jurisdiction in the present suit. Issue No. 3 is accordingly answered in favour of the plaintiff and against the defendants.

⁸ Emphasis supplied.



B. Issue No. 1

33. The only defence taken by defendant no. 1, to resist payment under the L/C, is that the documents submitted by the plaintiff were not in terms of the L/C. Three specific conditions in the L/C (as amended) have been relied upon in this connection. They are as follows:-

- (i) Documentary credit number be not mentioned on any document/s except commercial invoice.
- (ii) No lien to be exercised at discharging port for demurrage incurred at loading port. It was stipulated in the L.C. that this mention of no lien, as stated above, be counter-signed by Captain of the Vessel or its agent with Captain's authorisation.
- (iii) The negotiating documents must have a phytosanitary certificate, which must clearly state that the “*goods are fit for human consumption.*”

Each of these alleged discrepancies is taken up in turn.

(i) *Re: Mentioning of L/C number*

34. The first discrepancy cited by defendant No. 1 was that the documentary credit number was mentioned on documents other than the commercial invoice and copy of the telex or fax. Mr. Nargolkar argued that the documents submitted by defendant No. 2 all showed the number of the documentary credit. However, no details of the specific documents in question are contained in the written statement filed by defendant No. 1.

35. The relevant special condition in the L/C is reproduced hereinbelow:



“NO PRICE/VALUES OR CONTRACT/INVOICE/DOCUMENTARY CREDIT NUMBERS TO BE MENTIONED ON ANY DOCUMENT EXCEPT COMMERCIAL INVOICE AND COPY OF TELEX OR FAX.”

36. On a perusal of the documents exhibited, the number of the documentary credit, which appears on the face of PW 1/1 as “98-404200/MC” does not appear in the documents. In the telex message dated 27.11.1998⁹, sent by defendant No. 2 to defendant No. 1, it was clarified that the documents show the negotiation reference, and not the L/C numbers. The following extract of the said telex is relevant for this purpose:-

“ALL DOCUMENTS SHOW OUR NEGOTIATION REF. NO AND NOT ANY OF OUR L/C NUMBERS. THIS IS A COMMON PRACTISE IN INDIA AMONGST THE BANKERS TO BRAND THEIR NEGOTIATION REF. NO. ON ALL THE DOCUMENTS OF A BILL TO ESTABLISH VOUCH AND TITLE. AS YOUR SPECIAL CONDITION 5 BARS FROM MENTIONING ANY DOCUMENTARY CREDIT NUMBERS. THUS WE BELIEVE YOU ARE ANSWERED FOR THIS POINT.”¹⁰

37. In the course of arguments, Mr. Nargolkar submitted that even the negotiation reference number ought not to have been stated in the documents, as only the commercial invoice and copy of telex or fax were to be mentioned.

38. I do not find the aforesaid contention to be tenable. The L/C clearly prohibited mention of stipulated particulars on the documents, except commercial invoice or copy of telex or fax. Those particulars did not include the negotiation reference numbers. As submitted by Mr. Nargolkar himself, a documentary credit is to be strictly complied with; its conditions

⁹ EX. PW 1/39.

¹⁰ Emphasis supplied.



must also be taken as they stand. What was prohibited in the present case included reference to the L/C number, but the defendants have not shown any document which contains a reference to the L/C number, as printed on the face of the L/C. I, therefore, hold that the assertion of a discrepancy on this ground was unwarranted.

(ii) Re: Countersigning of the “no lien” endorsement

39. The second discrepancy urged by defendant No. 1 was that the Master was required to specifically counter-sign the “no lien” clause in the bill of lading.

40. The following clause was added in the L/C by an amendment dated 15.10.1998:

*“UNDER SPECIAL CONDITION THE FOLLOWING CLAUSES IS ADDED:
BILLS OF LADING MUST BEAR THE FOLLOWING MENTION
“NO LIEN TO BE EXERCISED AT DISCHARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT.”
THIS MENTION MUST BE COUNTERSIGNED BY CAPTAIN OF THE VESSEL OR ITS AGENT WITH CAPTAIN AUTHORIZATION.”*

41. All the five bills of lading have been exhibited as Ex. PW 1/7 to Ex. PW1/11. I find that each of them contains an endorsement “*No lien to be exercised at discharging ports for discharge incurred at loading port*”, and bears the stamp and signature of the Master of vessel in close proximity, in fact touching the endorsement in each case. As this point turns on a visual examination of the documents in question, copies of the said documents are reproduced below. I have highlighted the relevant endorsement and the signature of the Master, which have led me to the above conclusion.



Exp PW1/7

32
283
32

CODE NAME: "CONGENBILL" EDITION 1994

SHIVNATH RAI HARNARAIN (INDIA) LTD
B-16 BHAGWAN DASS NAGAR
NEW DELHI 110 026 INDIA
ON BEHALF OF
GYMA INTERNATIONAL SA
PARIS / FRANCE

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

H/L No. 1

TO THE ORDER OF BANQUE NATIONALE DE PARIS
(SUISSE) SA - GENEVA/SWITZERLAND

Notify address

GYMA INTERNATIONAL
7 RUE DE PHALSBURG
75017 PARIS / FRANCE

OWNERS

SPENCER MARITIME INC
GREECE

W/VV SPENCER COCHINADA (INDIA)
BANJUL / GAMBIA

Shippers description of goods

60000 POLYPROPYLENE BAGS
1) 2992.800 MT INDIAN WHITE (NON BASMATI) RICE VARIETY 1001, CROP 1997-1998, BROKENS MAX 25 PCT.
PACKING: IN NEW SINGLE DOUBLE STITCHED POLYPROPYLENE BAGS OF 50 KILOS GROSS EACH WITH TARE OF EMPTY BAGS OF MINIMUM 120 GRAMS
3000.000 MTS
NET WEIGHT 2992.800 MTS

S/MARKS

WHITE MILLED RICE LONG GRAIN
25 PCT BROKENS
50 KGS NET
ORIGIN INDIA

S.B.NO: & DATE : 569/20.8.98
G.R.NO: & DATE : AL 618104/20.8.98
CUS. SEC. NO. : 4998000619

1.1) 2 PCT (1200 NOS.) EMPTY SPARE BAGS

NO LIEN TO BE EXERCIZED AT DISCHARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT.

FREIGHT PRE PAID

CLEAN ON BOARD

(of which being respons... at Shipper's risk; the Carrier no: ... damage howsoever arising)

Freight payable, as per CHARTER-PARTY dated 06.11.98
FREIGHT ADVANCE Received on account of freight:
Time used for loading ... days ... hours

SHIPPED at the Port of ... in ... order and conditions ... carriage to the Port of Discharge or ... Weight, measure, quality, quantity, condition, contents and value unknown.
IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomp. lished the others shall be void.
FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

C. 15 ... Withheld ... London ... Tel. No. 0171 251 8341 Fax No. 0171 251 1200 by authority of The Baltic and International Maritime Council, (BIMCO) Copenhagen.

FRIGHT PREPAID COCHINADA
Number of original B/L THREE (3)
Signature
M.V. SPENCER
CAPT. KOVAL, GREECE

Certified True copy

For State Bank of Mysore

Asstt. Gen. Manager
New Delhi, India



EXPW1/8

33
33
33

CODE NAME: "CONGENBILL" EDITION 1994

S. L. V. NATH RAI HARNARAIN (INDIA) LTD
B-16 BHAGWAN DASS NAGAR
NEW DELHI 110 026 INDIA
ON BEHALF OF
GYMA INTERNATIONAL SA

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES
Reference No. 33

Page 2

Consignee PARIS/FRANCE

TO THE ORDER OF BANQUE NATIONALE DE PARIS
(SUISSE) SA - GENEVA/LITZERLAND

GYMA INTERNATIONAL
7 RUE DE PHALSBURG
75017 PARIS/FRANCE

OWNERS
SPENCER MARITIME INC
GREECE

Vessel M.V. SPENCER Port of loading KAKINADA (INDIA)

Port of discharge BANJUL/GAMBIA

Shipper's description of goods

| | | |
|--------------------------------|---|--|
| 60000 POLYPROPYLENE BAGS | 1) 2992.800 MT INDIAN WHITE (NON BASMATI) RICE VARIETY 1001, CROP 1997-1998, BROKENS MAX 25 PCT PACKING: IN NEW SINGLE DOUBLE STITCHED POLYPROPYLENE BAGS OF 50 KILOS GROSS EACH WITH TARE OF EMPTY BAGS OF MINIMUM 120 GRAMS | 3000.000 MTS NET WEIGHT 2992.800 MTS |
| | 11) 2 PCT (1200 NOS.) EMPTY SPARE BAGS | |

S/MARKS

WHITE MILLED RICE LONG-GRAIN
25 PCT BROKENS
50 KGS NET
ORIGIN INDIA

S.B.NO. & DATE : 569/20.8.98
G.R.NO. & DATE : AL 618104/20.8.98
CUS. SEC. NO. : 4998000619

NO LIEN TO BE EXERCIZED AT DISCHARGING PORTS
FOR DEMURRAGE INCURRED AT LOADING PORT.

FREIGHT PRE PAID

(of which being responsible for loss of cargo) Shipper's risk: the cargo howsoever arising

Freight payable as per CHARTER-PARTY dated 06.11.1998
FREIGHT ADVANCE Received on account of freight:
Time used for loading days hours

SHIPPED ON BOARD 5 NOV 1998
loading in apparent good order and condition on board the Vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above.

Weight, measure, quality, quantity, condition, contents and value unknown.
IN-WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at Place and date of issue

FREIGHT PREPAID KAKINADA

Number of original B/L THREE (3)

Signature MASTER M.V. SPENCER

CAPT: KOVAL GRIGORIYEVICH

C. 15 Printed and sold by Witherby & Company Limited, 27/28 Abchurch Lane, London EC4A 3DF
Tel. No. 0171.251 6341 Fax No. 0171 251 1296
by authority of The Baltic and International Maritime Council, (BIMCO) Copenhagen

Certified True Copy
For State Bank of Mysore

Asstt. Gen. Manager
New Bazar, Delhi



Ex PW1/9

CODE NAME: "CONGENBILL" EDITION 1994

Shipper: SHYVNATH RAI HARNARAIN (INDIA) LTD
B-36 BHAGWAN DASS NAGAR
NEW DELHI 110 026 INDIA
ON BEHALF OF
GYMA INTERNATIONAL SA
Consignee PARIS/FRANCE

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

B/L No. 34

Reference No. 34

TO THE ORDER OF BANQUE NATIONALE DE PARIS
(SUISSE) SA - GENEVA/SWITZERLAND

Notify address

GYMA INTERNATIONAL
7 RUE DE PHALSBURG
75017 PARIS/FRANCE

OWNERS
SPENCER MARITIME INC
GREECE

Vessel: M.V. SPENCER Port of loading: KAKINADA (INDIA)

Port of discharge: BANJUL/GAMBIA

Shipper's description of goods

| | Gross weight |
|---|-------------------------|
| 60000 POLYPROPYLENE BAGS | 3000.000 MTS |
| 1) 2992.800 MT INDIAN WHITE (NON BASMATI) RICE VARIETY 1001, CROP 1997-1998, BROKENS MAX 25 PCT | NET WEIGHT 2992.800 MTS |
| PACKING: IN NEW SINGLE DOUBLE STITCHED POLYPROPYLENE BAGS OF 50 KILOS GROSS EACH WITH TAKE OF EMPTY BAGS OF MINIMUM 120 GRAMS | |
| 11) 2 PCT (1200 NOS.) EMPTY SPARE BAGS | |

S/MARKS

WHITE MILLED RICE LONG GRAIN
25 PCT BROKENS
50 KGS NET
ORIGIN: INDIA

S.B.NO. & DATE : 569/20.8.98
G.R.NO. & DATE : AL 618104/20.8.98
CUS. SEC. NO. : 4998000619

NO LIABILITY BE EXERCISED AT DISCHARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT.

FREIGHT PRE PAID

(of which being responsible for damage howsoever caused)

NO LIABILITY BE EXERCISED AT DISCHARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT.

Freight payable as per CHARTER-PARTY dated: 06.11.1998

FREIGHT ADVANCE Received on account of freight: STATE BANK OF MYSORE

Time used for loading: 7.90 hours

SHIPPED ON BOARD IN GOOD CONDITION on board the vessel for carriage to the Port of Discharge or so near thereto as she may safely get the goods specified above. Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at Place and date of issue: FREIGHT PREPAID KAKINADA 17.11.1998

Number of original B/L: THREE (3)
Signature: MASTER M.V. SPENCER
CAPT: KOVAL GR

C. 15 Printed and sold by Witherby & Company Limited, 32/36 Aylesbury Street, London EC1A 0ET
Tel. No. 0171 251 5341 Fax No. 0171 251 1296
by authority of The Baltic and International Maritime Council, (BIMCO) Copenhagen.

Certified true copy
For State Bank of Mysore
Asstt. Gen. Manager
Raja Bazar, Mysore



EX PW1/10

766-35

CODE NAME: "CONGENBILL" EDITION 1994

Shipper
SHRI RAI HARNARAIN (INDIA) LTD
B-16 BHAGWAN DASS NAGAR
MIN D-LHI 110 026 INDIA
ON BEHALF OF
GYMA INTERNATIONAL SA
Paris/FRANCE

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

Page 2

D/L No. 4
Reference No. 35

TO THE ORDER OF BANQUE NATIONALE DE PARIS
(SUISSE) SA - GENEVA/SWITZERLAND

Notify address

GYMA INTERNATIONAL
7 RUE DE PHALSBURG
75017 PARIS/FRANCE

OWNERS
SPENCER MARITIME INC
GREECE

Vessel: M.V. SPENCER Port of loading: KAKINADA (INDIA)
Port of discharge: ONE WEST AFRICAN PORT

Shipper's description of goods: POLYPROPYLENE BAGS
Gross weight: 3000.000 MTS
1) 2992.800 MT INDIAN WHITE (NON BASMATI) RICE VARIETY 1001, CROP 1997-1998, BROKENS MAX 25 PCT
PACKING: IN NEW SINGLE DOUBLE STITCHED POLYPROPYLENE BAGS OF 50 KILOS GROSS EACH WITH TARE OF EMPTY BAGS OF MINIMUM 120 GRAMS
NET WEIGHT: 2992.800 MTS
11) 2 PCT (1200 NOS.) EMPTY SPARE BAGS

S/MARKS

WHITE MILLED RICE LONG GRAIN
25 PCT BROKENS
50 KGS NET
ORIGIN INDIA

S.B.NO: & DATE : 727/11.11.98
G.R.NO: & DATE : AL 618155/11.11.98
CUS. SEC. No. : 4998000786

NO LIEN TO BE EXERCIZED AT DISCHARGING PORTS
FOR DEMURRAGE INCURRED AT LOADING PORT

FREIGHT PREPAID

(of which on deck in bulk, or in the hold, or in any other part of the vessel, being responsible for loss or damage howsoever arising)



CLEAN ON BOARD



Freight payable as per CHARTER-PARTY dated... 06.11.1998
FREIGHT ADVANCE Received on account of freight...
Time used for loading... hours.

SHIPPED at the Port of Loading in conformity with order and conditions on board the Vessel for carriage to the Port of Destination so near thereto as she may safely get the goods specified above. Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at Place and date of issue
FREIGHT PREPAID KAKINADA

Number of original Bills of Lading: THREE (3)
Signature: MASTER M.V. SPENCER
CAPT: KOVAL GRIORBY

C. 15 Printed and sold by Witherby & Company Limited, 32/36 Aylesbury Street, London EC1R 0ET
Tel. No. 0171 251 5341 Fax No. 0171 251 1296
by authority of The Baltic and International Maritime Council, (BIMCO) Copenhagen.

THREE (3) Bills of Lading
For State Bank of Mysore
Asstt. Gen. Manager
Mysore Branch



Exhibit PW1/11

36
36
36

COA NAME: "GONGENBILL" EDITION 1504

SHIPPER
SHIVNATH RAI HARNARAIN (INDIA) LTD
B-16 BHAGAN DASS NAGAR
NEW DELHI 110 026 INDIA
ON BEHALF OF
GYMA INTERNATIONAL SA
PARIS / FRANCE

BILL OF LADING
TO BE USED WITH CHARTER-PARTIES

B/L No. 5

Reference No.

TO THE ORDER OF BANQUE NATIONALE DE PARIS
(COUSIN) SA - GENEVA/SWITZERLAND

GYMA INTERNATIONAL
7 RUE DE PHALSIONG
75017 PARIS / FRANCE

OWNERS
SPENCER MARITIME INC
GREECE

Vessel
M.V. SPENCER Port of loading
KAKINADA (INDIA)

Port of discharge
ONE WEST AFRICAN PORT

Shipment description of goods

10000 POLYPROPYLENE BAGS
1) 498,800 MT INDIAN WHITE (NON BASMATI) RICE VARIETY 1001, CROP 1997-1998, BROKENS MAX 25 PCT PACKING: IN NEW SINGLE DOUBLE STITCHED POLYPROPYLENE BAGS OF 50 KILOS GROSS EACH WITH TARE OF EMPTY BAGS OF MINIMUM 120 GRAMS 500,000 MTS NET WEIGHT 498,800 MTS

11) 2 PCT (200 NOS.) EMPTY SPARE BAGS

S/MARKS

WHITE MILLED RICE LONG GRAIN
25 PCT BROKENS
50 KGS NET
ORIGIN INDIA

S.B.NO: & DATE : 728/11.11.98
G.R.NO: & DATE : AL 618163/11.11.98
CUS. SEC. NO. : 4998000787

NO LIEN TO BE EXERCIZED AT DESCARGING PORTS FOR DEMURRAGE INCURRED AT LOADING PORT.

FREIGHT PRE PAID

(of which on deck at Shipment is the Carrier being responsible for loss or damage howsoever arising)

Freight payable as per CHARTER-PARTY dated 06.11.1998
FREIGHT ADVANCE Received on account of freight:
Time used for loadingdays..... hours

SHIPPED at the Port of Loading in accordance with order and conditions on board the Vessel for carriage to the Port of Discharge of the Vessel as she may safely get the goods specified above. Weight, measure, quality, quantity, condition, contents and value unknown.

IN WITNESS whereof the Master or Agent of the said Vessel has signed the number of Bills of Lading indicated below all of this tenor and date, any one of which being accomplished the others shall be void.

FOR CONDITIONS OF CARRIAGE SEE OVERLEAF

Freight payable at Place and date of issue
FREIGHT PREPAID KAKINADA
Number of original Bills of Lading THREE (3)
Signature
MASTER
H.V. SPENCER
CAPT. KOVAL

C.15 Printed and sold by Withers & Company Limited, 32/36 Aylesbury Street, London EC1R 0ET
Tel. No. 0171 251 5341 Fax No. 0171 251 1796
by authority of The Baltic and International Maritime Council, (BIMCO) Copenhagen.

Certified True Copy
For State Bank of Mysore
Assistant Manager
Mysore Branch



42. Mr. Nargolkar's submission, as far as this aspect is concerned, was that the three signatures which appear on these documents, were in support of the endorsement "*Freight Prepaid*" and "*Clean on Board*", and for the bill of lading as a whole, but no specific signature of the Master is to be found in respect of the endorsement in question.

43. Upon a perusal of the bills of lading, however, it is seen that the endorsement, "*Clean on Board*" in each bill of lading, is separately and proximately endorsed by the Master. Further, although the original L/C required the bills of lading to be marked as "*Freight Prepaid*", it did not contain a specific stipulation that the said marking must be separately countersigned by the Master of the vessel. Article 33(b) of the UPCDC also indicates that stamping of the words "*Freight Prepaid*" is sufficient for this purpose. On a balance of probabilities, therefore, I am of the view that the "no lien" endorsement was duly countersigned by the Master of the vessel, on each of the bills of lading.

44. For these reasons, I find in favour of the plaintiff that the "no lien" endorsement was stamped and signed by the Master as required in the L/C, and the assertion of defendant No. 1 to the contrary, is unsustainable.

(iii) *Re: Phytosanitary certificate*

45. This allegation concerns the requirement in the L/C, with regard to a phytosanitary certificate issued by SGS India Ltd. ["SGS"]. The relevant condition in the L/C (as amended)¹¹ is reproduced hereinbelow:

"PHYTOSANITARY CERTIFICATE ISSUED BY S.G.S. INDIA LTD IN ONE ORIGINAL & TWO COPIES CERTIFYING THAT GOODS ARE FIT FOR HUMAN CONSUMPTION."

¹¹ By amendment dated 07.09.1998.



46. Phytosanitary certificates, in support of each bill of lading, have been exhibited as Ex. PW 1/29 to Ex. PW 1/33. Each of them contains an identical endorsement in the following terms:

“WE HAVE SIGHTED A COPY OF PHYTOSANITARY CERTIFICATE NO. 696, ISSUED BY THE DIRECTORATE OF PLANT PROTECTION, QUARANTINE AND STORAGE, MINISTRY OF AGRICULTURE, GOVERNMENT OF INDIA, CERTIFYING THAT THE PLANT PRODUCE DESCRIBED ABOVE HAVE BEEN INSPECTED AND FOUND FREE FROM QUARANTINE PESTS AND SUBSTANTIALLY FREE FROM OTHER INJURIOUS PESTS, AND THAT THEY ARE CONSIDERED TO CONFORM WITH THE CURRENT PHYTOSANITARY REGULATIONS OF THE IMPORTING COUNTRY & ALSO HAVE SIGHTED A COPY OF HEALTH CERTIFICATE ISSUED BY VETERINARY DOCTOR CERTIFYING THAT THE GOODS ARE FIT FOR HUMAN CONSUMPTION.

BASED ON THE ABOVE INFORMATION, CERTIFIED THAT THE GOODS ARE FIT FOR HUMAN CONSUMPTION.”¹²

47. The contention of defendant No. 1 is that the stipulation required SGS to carry out the analysis of the goods, and the certification could not be based upon phytosanitary certificates issued by the Government of India.

48. As noted above, the stipulations in an L/C are to be strictly construed. The stipulation in present case was for certification by SGS, which SGS has duly provided. The L/C did not provide any particular basis or specific manner in which SGS was to reach the conclusion that the goods were fit for human consumption. It certainly did not require that the underlying scientific analysis be undertaken by SGS itself. The requirement of the L/C is, in my view, duly satisfied by the certificates provided by SGS.

¹² Emphasis supplied.



Answer to Issue No.1

49. In view of the aforesaid, I find that none of the alleged discrepancies raised by defendant No. 1, in its communications dated 26.11.1998 and 02.12.1998, were justified in terms of the L/C. To the contrary, the explanation offered by defendant No. 2 was satisfactory in all aspects.

50. No other defence has been raised by defendant No.1 on the merits of the plaintiff's claims. There is also no dispute with regard to the quantum of the claim, which has been justified by the plaintiff as follows¹³:

“That total amount which is claimed in the present suit as against the defendants jointly as well as severally comes to Rs.5,23,49,757.00 which also includes the interest due thereon or the reducing balance @ of 20% p.a. till 31.3.2000 as per guidelines of Reserve Bank of India. The defendant No.2 has also raised the claim for interest at the same rate. The transaction between the parties was commercial and the plaintiff is entitled to the said rate.”

51. Issue No. 1 is, therefore, decided in favour of the plaintiff, and against defendant No. 1.

C. Issue No. 2

52. The plaintiff claims interest at the rate of 20% per annum, based upon the rate of interest which it paid to defendant No. 2. Mr. Batra relied upon two certificates issued by defendant No. 2 marked as Ex. PW 1/42 and Ex. PW 1/43 [wrongly marked as Ex. PW 1/45].

53. As far as these certificates are concerned, it may be noted that the entire amount paid by the plaintiff to defendant No. 2 has already been included in the plaintiff's claim under issue No. 1. The averment in paragraph 33 of the amended plaint is also to the effect that interest has been included until 31.03.2000. The question to be determined is,

¹³ Paragraph 33 of the plaint.



therefore, of the rate of interest *pendente lite*, if any, and future interest, i.e. for the post decree period, until realisation.

54. In this connection, Mr. Batra drew my attention to Section 34 of the CPC, which provides for grant of *pendente lite* interest at the rate considered reasonable by the Court. He also cited the judgment of the Supreme Court in *C.K. Sasankan v. Dhanalakshmi Bank Ltd.*¹⁴, and of this Court in *Dhani Ram v. Delhi Development Authority*¹⁵.

55. The judgment of the Supreme Court in *C.K. Sasankan* makes it clear that the Court's discretion with regard to fixation of the rate of interest, is to be exercised "*properly, reasonably and on sound legal principles and not arbitrarily*". The Court found the rate of 25% per annum, granted by Debts Recovery Tribunal in that case, to be excessive and instead granted interest at the rate of 9% per annum. In *Dhani Ram*, this Court referred *inter alia* to the aforesaid judgment of the Supreme Court, and found the plaintiff therein entitled to the interest at the rate of 12% per annum.

56. On the point of interest, Mr. Nargolkar's submission was that interest ought to be awarded only upon the principal sum of Rs. 3,83,88,516/-, which was the difference between the amount of the L/C and the amount recovered by the plaintiff through the sale of the consignment to third parties. He submitted that the balance of the amount claimed in issue No. 1, i.e. Rs. 1,39,61,241/- was paid by the plaintiff to defendant No. 2 on account of interest upon the advance amount.

57. I am not persuaded by Mr. Nargolkar's submission, with regard to the quantum upon which interest should be computed. Recovery is sought

¹⁴ (2009) 11 SCC 60 [hereinafter, "*C.K. Sasankan*"].

¹⁵ (2018) 249 DLT 716 [hereinafter, "*Dhani Ram*"].



by the plaintiff of the amount actually paid by it to defendant No. 2. To the extent that such payment was by way of interest, it was a direct and foreseeable consequence of the failure of defendant No. 1 to honour the L/C. In a commercial transaction, the fact that an exporter has availed of an advance against export bills, is not so remote or unprecedented, so as to render the interest actually paid unrecoverable.

58. As far as the rate of interest *pendente lite* and future interest are concerned, in my view, award of simple interest at the rate of 12% per annum is reasonable, bearing in mind that the transaction was a commercial transaction under a documentary credit.

D. Issue No. 4

59. No other relief was claimed or pressed.

VII. Conclusion

60. For the reasons aforesaid, the suit is decreed in favour of the plaintiff, and against defendant No. 1, in the sum of Rs. 5,23,49,757/-, alongwith simple interest *pendente lite* at the rate of 12% per annum. Interest will be paid upon the said sum at the same rate, until realisation.

61. The suit, as against defendant Nos. 2 and 4, is dismissed as not pressed.

62. Defendant No. 1 will also pay costs of the suit to the plaintiff, assessed at Rs. 10 lakhs, inclusive of court fees paid of Rs. 5,13,280/-.

63. Decree sheet be prepared accordingly.

PRATEEK JALAN, J

FEBRUARY 28, 2025/pv/Ainesh