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STATE BANK OF INDIA AND ORS.

v.

MANGANESE ORE (INDIA) LTD. AND ANR.

OCTOBER 8, 1996

B

[K. RAMASWAMY AND G.B. PATTANAIK, JJ.]

Banking :

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Letters of credit—Non-compliance with terms and conditions by seller—Bank's liability to honour the letters of credit—Respondent-seller company filed a suit for recovery of money against the buyer and the bank as the two defendants had entered into letters of credit—Trial Court decreed the suit as against buyer only holding that quality of goods supplied by the seller did not match the quality of goods contracted under the letters of credit—High Court reversed the decree as against the Bank and held it liable to pay the decretal amount—Held, when the parties have admitted that the goods supplied were not of a specification and standard required under the letters of credit vis-a-vis the Bank and the buyer, the obligation to honour the letters of credit having been conditional one, the Bank is absolved of its liability to honour the letters of credit and pay over the value of goods supplied by the plaintiff to buyer company—Judgement and decree of High Court set aside and that of the trial court is restored—Plaintiff shall seek for payment from the buyer company.

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CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1717 of 1980.

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From the Judgment and Order dated 31.10.79 of the Bombay High Court in A. No.163 of 1971.

Sanjay Kapur, Yashank Adhyaru and M.K. Michael for the Appellants.

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A.K. Sanghi for the Respondents.

The following Order of the Court was delivered :

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This appeal by special leave arises from the judgment of the Division Bench of the Bombay High Court made on October 30-31, 1979 in Appeal

No. 163/71.

The first respondent-Manganese Ore (India) Ltd. laid the suit against the appellant and M/s. Emmenor Export Traders, the first defendant to recover the suit amount in the sum of Rs. 1,69,000 and odd. The trial Court in Special Suit No. 91/69 by judgment and decree dated April 30, 1971 decreed a sum of Rs. 1,66,191.10 as against the first defendant. On appeal by the first respondent, the High Court reversed the decree as against the appellant and made the appellant liable to pay over the same. When the leave was granted by this Court, the appellant was directed to deposit the decretal amount and the first respondent was given liberty to withdraw the amount on furnishing adequate security to the satisfaction of the Registrar of the High Court.

The question in this case is: Whether the appellant is liable to honour the letters of credit entered into between the appellant and M/s. Emmenor Export Traders? The admitted position is that under the letters of credit a conditional contract was entered into between the appellant and the first defendant. The most important clauses relating thereto are as under :

"Clauses 1(i) and 1(iii)(b). Clause 1(i) provides in respect of the documents for negotiations. Firstly, it is the seller's signed commercial invoice in quadruplicate based on the weight, sampling, analysis and moisture determined at the time of shipment, valuing the ore at the ratio of 17 U.S. dollars converted into @ Rs. 4.75 to one U.S. dollar per dry metric Tonne of 1,000 Kg. net dry weight, F.O.B. Vishakhapattanam, on the basis of 40 per cent Manganese with the *pro rata* scale for each unit of Manganese content above or below 40 per cent down to the minimum of 39 per cent. The clause 1(iii)(b) speaks about the certificate in triplicate from M/s. R.G. Brigga and Co. Private Ltd. of sampling assaying and moisture, determined at the post of shipment showing the material to conform to the following contracted qualities. (B) hard lumpy, Indian Low grade Manganese Ore having the following chemical analysis at 105 degrees C. minimum 39 per cent. (F.E.) Iron Maximum 8.25 per cent SIO-2 Maximum 23.00 per cent Phosphorus Minimum 0.23 per cent (All approximately)."

The trial Court as well as the High Court have recorded a finding that the quality of the goods supplied by the defendant to the buyers did

A not match the quality contracted for under the letters of credit. The trial Court considered this aspect of the matter and the obligation to honour the contract in paragraph 13 and concluded as under :

B "Now I proceed to see whether, the Plaintiff had compiled with both these clauses. It is not now disputed that in both the supplies made by the Plaintiff to the Defendant No. 1, the phosphorus was more than the agreed maximum of 0.23 and that in one of the supplies the Manganese was below the minimum of 39 per cent. This can be found from the documents presented by the Plaintiff to Defendant No. 2 at the time negotiations on 20th June 1966. C They are exhibits 80 to 85. Exhibits 81 to 84 are the certificates issued by the analyser R.V. Brigga and Co. Exhibit 81 shows the Manganese to be 38.06 per cent and the phosphorus to be 0. 240 per cent and exhibit 84 shows that the phosphorus was 0.246 per cent. Now this approximation clause qualifying these percentages stated either in the letter of credit exhibit 78 or in the agreement D at exhibit 69 cannot be so read as to allow the percentages to go below or above the agreed minimums and maximums. The minimum and the maximum percentages shall have to be treated as the percentages of rejection limits. The approximate percentage can be slightly above the minimum agreed and slightly below the E maximum agreed. This clause regarding approximation cannot be read so as to allow a percentage below the rejection limits. If this is allowed there will be no limit in lowering down the minimum and the shooting up the maximum. In my opinion the minimum and maximum percentages stated in the agreement at exhibit 68 F or in the attached sheet of letter of credit at exhibit 78, shall have to be taken as rejection limits."

Thus, the trial Court found that the first respondent had not fulfilled the terms and conditions of the letters of credit in respect of the quality of the goods and did not grant the decree against the appellant.

G The High Court also recorded the finding as under :

H "It will thus be seen that the two shipments so far as Phosphorus was concerned, (exceeded the maximum which was shown therein, namely, 0.23 in one case by 0.01 per cent and in the other by 0.16 per cent. So far as manganese is concerned, the first was down by

0.04 per cent while in the second consignment it was up by 0.1 per cent. There is no dispute between the parties about these facts. The shipments when sampled and analysed did not confer exactly to the quality specifications either in the agreement dated 18th March or the letter of credit dated 6th May is not a matter of dispute." A
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Having found that the shipment of the goods was not in conformity with the quality and specification either in the agreement dated 18th March or the letters of credit dated 6th March. The question arises : whether the appellants has been absolved of its liability to honour the contract entered into with the first defendant in terms of the letters of credit granted by the appellants? The High Court has proceeded on the premise that the appellant had submitted the bills for crediting the amount to the value of the goods supplied; it had enclosed all the credit letters required under the agreement including the analyst report and having accepted them, it has the duty to honour the letters of credit. It had given credit to the account of the first respondent-plaintiff of the amount of the value which was shipped under the letters of credit. We think that the High Court was not right in that behalf. It is seen that letters of credit are not irrevocable and unconditional contract entered into between the appellants and first defendant. It is subject to the compliance of the quality of the goods supplied by the first defendant to the plaintiff-first respondent. In view of the undisputed and admitted position that the goods were not of the quality conformable to either to the original agreement or the letters of credit, as stated earlier, the appellants is not obliged to honour the letters of credit, it being a condition precedent, namely goods supplied shall be of the quality in conformity with the conditions of the letters of credit. The High Court has evaluated the quality of the goods supplied and relied upon the last clause, namely, "approximate" and held that since the quality of the goods are approximate to the conformity of the quality, the appellants is not absolved of its liability to honour the letters of credit entered into between the appellants and first defendant. We think that the High Court was not right in its conclusion. But when the parties have admitted that the goods supplied were not of the specification and the standard required under the letters of credit vis-a-vis the appellants and the first defendant, the obligation to honour the letters of credit having been conditional one, the appellants is absolved of its liability to honour the letters of credit and pay over the value of the goods supplied by the first respondent to the first C
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- A defendant. Therefore, the view taken by the trial Court is correct and that of the High Court is not sustainable in law. The judgment and decree of the appellate Court stands set aside and that of the trial court stands restored, namely, the first respondent shall seek for the payment from the first defendant. Since the appellant was directed to deposit as per the orders of this Court, if the amount is already withdrawn, the appellant is at liberty to recover the same from the security furnished by the appellant. If the security is not sufficient, it will be open to the appellant to recover the balance amount from the first respondent in accordance with law.
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C The appeal is accordingly allowed, but, in the circumstances, without costs.

R.P.

Appeal allowed.