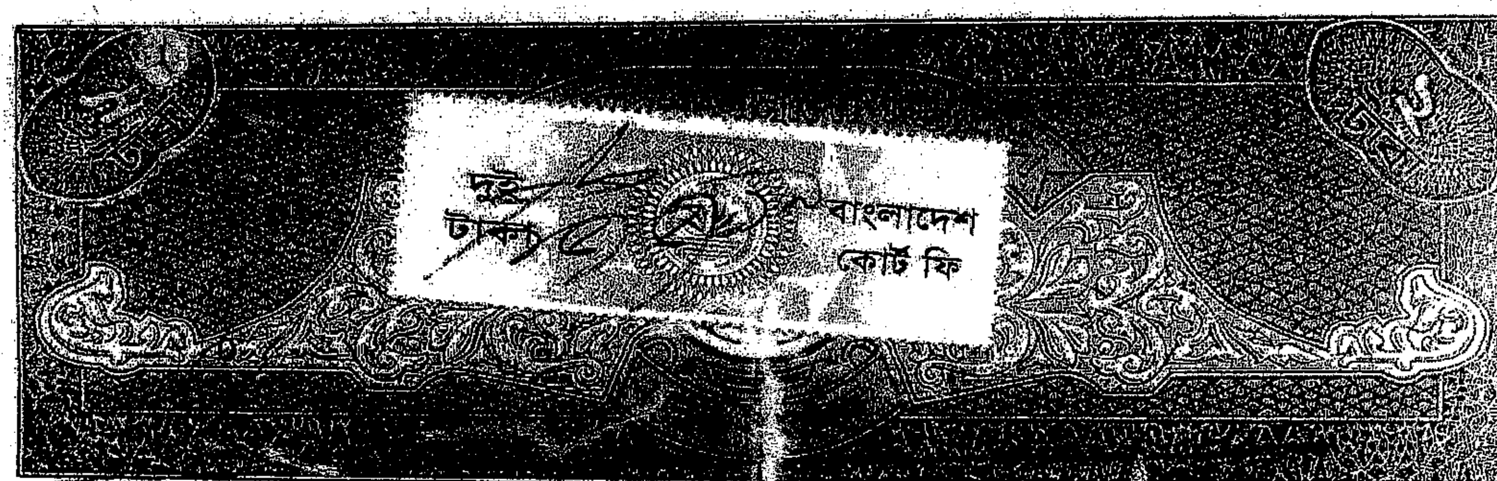

কোর্ট ফি ....
সঠিক আছে।

High Court Form No. 5(2)

Heading of judgment in Original Suit

District-Dhaka

In the court of Artha Rin Adalat No. 4, Dhaka.

Present- Ifat Mubina Eusuf

Judge

Artha Rin Adalat No. 4, Dhaka.

Date of Judgment: 28/04/2019.

<u>Artha Rin Suit No. 246/2014</u>

Uttara Bank Limited .... Plaintiff.

-Versus-

M/s. Sharif Spinning Ltd. and other ....Defendants.

This Suit coming on for final hearing on 11/03/2019 in presence of

1. Mr. Md. Ruso Mostafa .... Advocate for Plaintiff.
2. Mr. Md. Omar Faruk Molla ...... Advocate for Defendants No. 1-3.
3. Mrs. Shahrin Sultana Mala .... Advocate for Defendants No. 4-5.

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and having stood for consideration of this day, the court delivered the following judgment: This is a suit for realization of money amounting to Tk. 90,16,257.00 as on the date of 25/02/2014. The case of the plaintiff Uttara Bank Ltd., in short, is as follows, defendant nos 2/3 named as Md. Shafiqul Islam and Mst. Shamsunnahar are the chairman and managing director of defendant no 1 manufacturing company. Defendant nos 4 and 5 are the Sonali Bank Head Office and Sonali Bank Agargaon Branch. Defendant nos 2/3 since its incorporation have been continuing business with the plaintiff bank by opening current account for the purpose of smooth running of his business. At the request of defendant no 1, the plaintiff bank sanctioned Inland Bill Purchase Limit of Tk. 57,51,000/- through a sanction letter dated 08/06/2011 in its favor. Accordingly, the defendant no 1 handed several documents relating to delivery of goods towards the plaintiff bank. The defendant bank accepted the bills on/before maturity by issuing acceptance letters and letter of credits. The plaintiff bank upon receiving letter of credit, letter of acceptance, etc from defendant no 3 bank, disbursed the loan facility to the defendant no 1 against those Letters of Credit. The defendant no 1 availed the loan amount of Tk. 57,51,000/- and enjoyed the facility in its full. The maturity date of payment of IBP loan was 24/10/2011 and the extended maturity date was 22/2/2012. After expiry of maturity date, the defendant nos 4/5 refrained from repayment of loan despite the receipt of reminder letters dated 30/9/2012 and 5/11/2013. In such circumstances, the plaintiff bank issued legal notice dated 12/02/2014 asking defendant no 5 bank to adjust the outstanding amount but the defendant bank did not do the needful for liquidating the plaintiff's dues. Since the defendant no 1-3 guaranteed the aforesaid loan/credit facilities, all the defendants are jointly and severally liable to repay the outstanding liabilities.

The defendant no 1 has filed separate written statement in which he has stated that Messars Green Printers expressed

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their interest to purchase goods from defendant no 1 company and accordingly, the defendant nos 1-3, on the date of 30/5/2011, delivered 3 proforma invoice mentioning the conditions of supply of goods. Messars Green Printers being satisfied with the invoice, managed 3 letter of credits issued in favor of them and delivered the same to the plaintiff bank. The defendant no 1 supplied goods through delivery challan, bill of exchange and other documents towards the Green Printers Ltd and the latter received the goods on behalf of defendant nos 4/5 bank. The defendant nos 4/5 bank upon receiving the documents relating to supply of goods, delivered letter of acceptance dated 8/6/2011, towards the plaintiff bank. He has transferred all the garment accessories in due time and received 90% bill amount in his own account. The defendant nos 4/5 bank without complying with the promise to pay the L/C money, delivered a letter dated 22/1/2012 to the plaintiff bank seeking 5 months extension for payment. The defendant bank have not paid the L/C money towards within that time either. He neither has any connection with the LC related issues, nor received any loan from the plaintiff bank. The defendant no 1-3 have no liability to repay any amount to the plaintiff bank and the bank has filed the instant suit only to harass these defendants. Thus, they are entitled to get exemption from the liability of this suit.

The defendant nos 4/5, I,e, Sonali Bank Ltd. Head Office and Agargaon Branch have contested the suit by filing joint written statement denying all the material allegations of the plaint contending inter alia that the defendant bank has no idea concerning the alleged 3 LCs. There is no record of the said LCs in the register or ledger preserved by the defendant bank. The defendant bank has never issued any LC. The LC documents submitted by the plaintiff are false, fabricated and product of fraudulent practice. Without getting any confirmation from the defendant bank the plaintiff bank purchased bills from defendant nos 2-3 who are the

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proprietor of defendant no 1 company. The plaintiff bank has never informed the defendant bank about the transaction regarding L/C through either swift message or any other letter. The defendant bank is not bound to pay any amount against the fake L/C and thus, the defendant bank is entitled to get exemption from the liability.

Issues

The following re the issues for disposal of the instant case

1. Is the suit maintainable in its present form?
2. Whether the defendant no 1 is bound to repay the loan towards the plaintiff bank.
3. Whether the papers relating to letter of credit were duly issued by the defendant bank?
4. Whether the defendant are bound to pay the amount on the basis of LCs.
5. Whether the plaintiff is entitled to get relief as prayed for?

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Discussion and decision

The plaintiff bank has examined Md. Golam Sarower as PW1 to present their case. The papers and documents submitted by the plaintiff have been marked as exhibit no 1 series (6 copies of letter of credits), exhibit no 2 series (3 copies of letter of acceptance), exhibit no 3 series(3 copies of letters for verifying the genuineness of letter of acceptance), exhibit no 4 series (bill of exchange, delivery challan, commercial invoice etc), exhibit no 5 series(2 copies of application for sanction of IBP loan), exhibit no 6 series(sanction letter for IBP loan), exhibit no 7 series(5 copies of charge documents), exhibit no 8(extension of maturity date to pay overdue interest), exhibit no 9 series(approval letter for extension of maturity date by the defendant bank), exhibit no 10(approval letter for extention of maturity date by Uttara bank), exhibit no 11 series(2

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copies of reminder letters), exhibit no 12 series(copy of legal notice) and exhibit no 13(statement of account).

The defendant nos 4-5 have presented Mr. Md. Rezwanul Islam who has presented the case of defendant bank. They have submitted exhibit no ka(letter of authorization) before the court. The defendant no 2 has examined himself as DW2 to present his own case.

Issue no. 2

As per the contention of plaintiff bank, the defendant nos 1-3 made applications for availing credit facility to the plaintiff bank against the submitted export documents on the basis of letter of credits issued by the defendant nos 4 and 5 bank. The plaintiff bank has further contended that plaintiff bank sanctioned IBP limit of TK 57,51,000/- against the ILC to the defendant no 1-3. The assertion of the plaint, deposition of PW1 and the exhibit nos 5 series and 6 have proved the above mentioned contention of sanctioning Tk.

57,51,000/- towards the defendant nos 1-3. According to the contents of exhibit no 6, the plaintiff bank approved the loan on the basis of LCs contained therein. The exhibit no 7 series further reveal that the defendant no 1-3 availed the loan facility by executing several charge documents in favor of the plaintiff bank. Thus, it becomes evident that the plaintiff bank has issued sanction of the loan facility on the basis of L/Cs and the defendant no 1-3 have availed the facility in full. Apart from this, a the loan facility was sanctioned with a condition contained in the sanctioned letter which is as follows, 'You have to undertake that in the event of non realization or short realization of the bill value from the buyer's bank on the date of maturity for any reason whatsoever, you repay the entire loan amount availed against the above bill..' Consequently, in view of the fact of receipt of the loan by the defendant nos 1-3 as well as the condition contained in the exhibit no 6, the defendant nos 1-3 are bound to repay the loan amount mentioned in the exhibit no

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13 towards the plaintiff bank. Thus, this issue is decided in favor of the plaintiff bank.

Issue no 3

It is the case of defendant no 2 and 3 bank that they have not issued any letter of credit in favor of plaintiff bank. As per the contention of the written statement and the deposition of DW1, the authority of the bank has no knowledge about the said letter of credits and the record of such LCs are not available either in register or in computer system. On perusal of the exhibit no 1 series, it appears that it contains all kinds of information relating to the matter of issuing LC. At the top of LC(exhibit no 1), the irrevocable documentary credit number is shown as 44041199131. This number reveals the code of AD or non AD branch, the type of LC(local or foreign), the year of issuing LC and lastly the number of LC issued by them. It further contains every

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details required for issuing LC. According to the contents of exhibit no 1 series, Sonali Bank Agargaon Branch is the issuing bank, Uttara Bank is the advising bank. Other details relating to applicant, beneficiary, shipment and covering shipment of goods are laid down in the LC. Most importantly, in place of authorized signature, the sign and seal containing the name and number of authorized person are available. Likewise, it appears that exhibit nos (kha) and 2(gha) are separate LC bearing number 444041199132 and 444041199133 with same kind of contents to that of the exhibit no 1. In the backdrop of aforesaid circumstances, it becomes apparent to the court that the authorized and responsible officers of the defendant bank have issued the alleged LCs in favor of Uttara Bank. However, admittedly, Sonali Bank Agargaon Branch is a non AD branch and in that case, it requires permission through SWIFT code or in the appropriate case through mail from the head office. In this connection, it can be said that securing permission from the

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head office and use of swift code are formalities which have to be complied with by the branch office. It is apparent from the exhibit no 2 series that the branch office of the defendant bank has not complied with the formality of securing permission from the head of ice and therefore, the swift code is not available in the LC. n the same way, the contents of exhibit no 2 series(letter of acceptance from the defendant bank) do not contain any element of approval from the head office.

Though the required information , signature and seal are available in the LS's and acceptance letters (exhibit nos 1 series and 2 series), they do t ot contain the required approval from the head office of he defendant bank. In such circumstances, the inference can be safely drawn that the LC have not been duly issued complying all the internal formalities of the defendant bank in this regard. Thus, this issue is decided against the plaintiff bank.

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Issue no. 3

It has already been found in the issue no 2 that the plaintiff bank disbursed the amount to defendant no 1. Now the bone contention of the dispute is that whether the defendant bank is bound to pay the scheduled amount to the plaintiff bank against the alleged LCs. In order to resolve the matter, two question are important to be decided.

a) Whether the plaintiff bank, as advising bank took proper care to verify the authenticity of the LCs.

b) Whether any fraud is committed before issuing the LCs by the defendant bank.

According to article 7 of UCPDC 600, the advising bank shall take reasonable care to check the apparent authenticity of the credit which it advises. It has already been found that the LCs do not contain the required approval from either manager of the branch or the head office of the defendant bank. On perusal of the exhibit no 3 series, it appears that

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before sanctioning loan facility to the defendant no 1 on the basis of ILC, the plaintiff bank issued letter to the Manager, Sonali Bank, Agargaon Branch for verifying the genuineness of the ILCs. However, the plaintiff has not been able to submit any letter from the branch manager regarding confirming genuineness of the letter of acceptance. In the backdrop of aforesaid facts and circumstances, it becomes crystal clear before the court that the plaintiff bank did not take reasonable care to confirm the authenticity of the LCs.

Secondly, according to the article 7 of UCPDC 600, a letter of credit is essentially a bank's undertaking to pay against the presentation of documents that comply with the terms and conditions of that undertaking. As per the fundamental principle of LC transaction, fraud is an exception to the rule that a bank deals in documents alone and is obliged to pay against documents. It is evident from the documents submitted by the plaintiff banks that there are

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some inconsistencies as regards the transaction of goods. From example, each of the 3 separate LCs (exhibit no 1, 1kha and 1gha) contain same description of dates and goods. Likewise, the exhibit nos 4(ka), 4(ga) and 4(umo) reveal that the same goods are shown to have been delivered through separate individual documents on the basis of 3 separate LCs. Those documents also show that the LC issuing date, loan sanctioning date, goods delivery date, issuing letter of acceptance date are 1/6/2011, 8/6/2011, 5/6/2011, 8/6/2011 respectively. Thus, those documents show that the loan is sanctioned towards the defendant no 1 and the letter of acceptance is issued by the defendants on the same date and it seems very unusual for completing all the formalities on the same date. This raises the likelihood of concocted transaction among the parties. In view of the above mentioned facts and circumstances, the conclusion can be drawn to this effect that fraud and irregular activities have been committed in connection of the issuance of LCs and

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therefore , the defendant bank is not bound by the alleged LCs and letter of acceptance .

In the backdrop of above mentioned facts and circumstances, it becomes crystal clear that letter of credits are not established between the issuing defendant bank and negotiating plaintiff bank.

So, the defendant nos 4 and 5 bank shall not be responsible to the claiming bank to reimburse. Resultantly, this issue is decided against the plaintiff bank.

Issue no. 1

The plaintiff is a bank and has filed the present suit for recovery of loan money in the proper court. This is why there is no bar to run the suit in the present form. Thus this issue is decided in favor of the plaintiff.

Issue no. 4

After deciding the above mentioned issues, it becomes evident to the court that the plaintiff is entitled to get the relief from the defendant no 1-4 and not from defendant no 4 and 5.

Court fees paid are correct.

Hence

It is ordered

that the suit be decreed on contest against defendant no 1-3 and dismissed on contest against the defendant nos. 4-5 for realization of Tk. 90,16,257.00/-(Ninety lacs sixteen thousand two hundred and fifty seven taka) as on the date of 25/2/2014. The plaintiff bank is further entitled to realize interest as per prescribed rate of law till realization of the decretal money. The defendant nos. 1-3 are directed to repay the decretal money in favour of the plaintiff bank within 60 days from this date, failing which the plaintiff bank can realize the money in due process of law. The defendant nos 4-5 are hereby released from the liability of the instant suit.

At the time, when the suit is pending, if the defendants pay any amount, the plaintiff is directed to adjust it with the decretal amount accordingly

Composed & Corrected by me.

Sd/-Ifat Mubina Eusuf
Judge
Artha Rin Adalat No. 4, Dhaka

Sd/-Ifat Mubina Eusuf
Dt. 28.4.19
(Ifat Mubina Eusuf)
Judge
Artha Rin Adalat No. 4, Dhaka

অনুলিপি প্রস্তুতকারক
আল-হেলাল মিয়া

১৮/৫/১৯
রুবি আক্তার
অনুলিপি কারক

মোঃ মোরশেদ আলম [illegible]

দুই টাকা বাংলাদেশ কোর্ট ফি

অনুলিপির জন্য দরখাস্তের তারিখ	[illegible] তারিখ	[illegible] তারিখ	অনুলিপি প্রস্তুতের তারিখ	অনুলিপি প্রদানের তারিখ
৯|৫|১৯	২৪|৫|১৯	২৪|৫|১৯	২৫|৫|১৯	

মোব দমার ডিক্রী

কোর্ট ফি ...... সঠিক আছে।

অর্থঋণ আদালত নং-৪, ঢাকা।

অর্থঋণ মোকদ্দমা নং-২৪৬/২০১৪

রুজুর তারিখঃ ২৬/০২/২০১৪ ইং।

Uttara Bank Limited, Uttara Bank Bhaban, 47, Bir Uttam Shahid Ashfaq .s Samad Sarak, Dhaka (old 90, Motijheel C/A, Police Station-Motijheel, District-Dhaka) and one of its Branch Sitated at 116/1, New Circular Road, Dhaka popularly known as UTTARA BANK LIMITED, Siddeswari Branch, Dhaka.

.........................Plaintiff.

-VERSUS-

1. M/s. Sharif Spinning Ltd. of 51, Motijheel (1st floor), Motijheel C/A, Dhaka.
2. Mr. Md. Shafiqul Islam, Chairman, M/s. Sharif Spinning Ltd. of 51, Motijheel (1st floor), Motijheel

C/A, Dhaka And House # 1, Flat-1204, Estern Rainbow Tower, 41/3-4, Purana Paltan, Dhaka.

3. Mst. Shamsunnahar, Managing Director, M/s. Sharif Spinning Ltd. of 51, Motijheel (1st floor), Motijheel C/A, Dhaka And House # 1, Flat-1204, Estern Rainbow Tower, 41/3 4, Purana Paltan, Dhaka.

4. Sonali Bank Ltd. Head Office, Motijheel C/A, Dhaka, represented by its Manging Director.

5. Sonali Bank Ltd. Agargaon Branch, Shere-E-Bangla Nagar, Dhaka, represented by its Manager.

.............Defendants.

দাবীবাবদ

Suit for Realization of Money.

Suit Valued at Tk. 90,16,257.00 (Taka Ninety Lac Sixteen Thousand Two Hundred fifty seven) only including interest and other charges up to 25.02.2014.

"[illegible]"

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এই মোকদ্দমা ২৮/০৪/২০১৯ ইং তারিখে চূড়ান্ত নিষ্পত্তির জন্য জনাব ইফাত মুবিনা ইউসুফ, জজ অর্থঋণ আদালত নং-৪, ঢাকা।

সমক্ষে বাদী পক্ষে জনাব মোঃ রুশো মোস্তফা (এডভোকেট)

১-৩ নং প্রতিবাদী পক্ষে জনাব মোঃ ওমর ফারুক মোল্লা (এডভোকেট)

৪-৫ নং প্রতিবাদী পক্ষে জনাব শাহ্‌রিন সুলতানা মালা (এডভোকেট)

সাক্ষাতে উপস্থিত হইয়া হুকুম ও ডিক্রি হইল যে, that the suit be decreed on contest against defendant no 1-3 and dismissed on contest against the defendant nos. 4-5 for realization of Tk. 90,16,257.00/-(Ninety lacs sixteen thousand two hundred and fifty seven taka) as on the date of 25/2/2014. The plaintiff bank is further entitled to realize interest as per prescribed rate of law till realization of the decretal money. The defendant nos. 1-3 are directed to repay the decretal money in favor of the plaintiff bank within 60 days from this date, failing which the plaintiff bank can realize the money in due process of law. The defendant nos 4-5 are hereby released from the liability of the instant suit.

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At the time, when the suit is pending, if the defendants pay any amount, the plaintiff is directed to adjust it with the decretal amount accordingly.

Sd/-Judge
Artha Rin Adalat No. 4, Dhaka.

এই মোকদ্দমার খরচা বাবদ মবলগে ৬০৬০০/- বিবাদী পক্ষ অদ্য হইতে আদায়ের তারিখ তক শতকরা বার্ষিক টাকা হারে সুদ সহিত বাদী কে আদায় দেন।

অদ্য সন ২০১৯ সালের (১) ২৮/০৪ তারিখে আমার স্বাক্ষর ও আদালতের মোহরযুক্ত মতে দেওয়া গেল। (১) এই স্থলে রায়ের তারিখ লিখিবেন।

মোহর
গণপ্রজাতন্ত্রী বাংলাদেশ সরকার
অর্থঋণ আদালত নং-৪, ঢাকা।

স্বা/-ইফাত মুবিনা ইউসুফ
জজ
অর্থঋণ আদালত নং-৪, ঢাকা।
তাং-০৫/০৫/১৯

আর্জিতে বর্ণিত বাদী বিবাদীর
নাম ঠিকানা যথাযথ।
স্বা/-অস্পষ্ট
তাং ৩০/০৪/১৯

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মোকদ্দমার খরচ

বাদী	টাকা	প্রতিবাদী	টাকা
১। আর্জির নিমিত্ত ষ্ট্যাম্প	৫৭,৫০০/-	১। ওকালতনামার নিমিত্ত ষ্ট্যাম্প	৩০/-
২। ওকালতনামার নিমিত্ত ষ্ট্যাম্প	৩০/-	২। দরখাস্ত এবং এফিডেভিটের নিমিত্ত ষ্ট্যাম্প	২০/-
৩। দরখাস্ত এবং এফিডেভিটের নিমিত্ত ষ্ট্যাম্প	২০/-	৩। টাকার উপর উকিলের রসুন	৩০০০/-
৪। টাকার উপর উকিলের রসুন	৩০০০/-	৪। পরওয়ানা জারীর খরচ	১০/-
৫। পরওয়ানা জারীর খরচ	১০/-	৫। ডেমি কাগজ	৪০/-
৬। ডেমি কাগজ	৪০/-		
মোট	৬০,৬০০/-	মোট	৩১০০/-

অনুলিপি প্রস্তুতকারক

আল-হেলাল মিয়া
সাঁট মুদ্রাক্ষরিক কাম কম্পিউটার অপারেটর
অর্থঋণ আদালত নং-৪, ঢাকা।

রুবি আক্তার
অনুলিপি কারক

মোঃ মোরশেদ আলম
তুলনাকারক