

ORDER SHEET

IN THE HIGH COURT OF SINDH AT KARACHI

Suit No.1463 of 2016

DATE

ORDER WITH SIGNATURE OF JUDGE

1. For orders on CMA No.9690/16 (If granted)
 2. For orders on CMA No.9691/16 (U/O 39 Rule 1 & 2 CPC.)
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10-06-2016.

Mr. Ovais Ali Shah, Advocate for the plaintiff.

1. Granted.
2. Through this Suit, the plaintiff has sought declaration and permanent injunction to the effect that defendant No.2 has breached the terms of Contract dated 21.04.2016 and Letter of Credit established thereon on 25.04.2016. Learned Counsel for the plaintiff submits that pursuant to Contract with defendant No.2, the plaintiff established a Letter of Credit bearing No.1054LCS1615029 on 25.04.2016 through defendant No.1, setting out the terms and conditions incorporated in the Contract as part and parcel of the said Letter of Credit. Per Learned Counsel it was provided in the Letter of Credit that as soon as the Shipment is affected, such fact was to be advised by the beneficiary on the same day of Shipment directly to the applicant i.e. plaintiff and to M/s. UBL Insurers Limited., Karachi, giving full details of Shipment, whereas, copies of such Shipment Advices were to be accompanied with the original documents. He further submits that alongwith this, a complete set of Non-Negotiable documents was also required to be sent to the plaintiff immediately after Shipment through Courier Service and a Certificate to this effect was supposed to accompany original documents. Learned Counsel submits that as per information from M/s. UBL Insurers, they have not received any Shipment Advice in

respect of the Shipment and hence they are unable to insure the goods, which have already been shipped by defendant No.2. He further submits that neither they have received any such Non-Negotiable documents nor the documents received in the Bank are complete in nature, as the most crucial document i.e. Mill Test Certificate of the manufacturer is missing and the plaintiff has been defrauded as it is apprehended that inferior quality goods have been shipped. Per Learned Counsel they have requested the Bank/Defendant No.1, to stop the payment, however, the Bank is reluctant to do so despite the fact that documents do not tally with the requirement of Letter of Credit. He has relied upon the case of **Messrs Kohinoor Trading (Pvt.) Ltd. versus Mangrani Trading Co.** reported as **1987 CLC 1533**, to contend that though generally irrevocable letter of credits cannot be dishonored by a bank, but there are exceptional circumstances in which payment can be stopped.

Let notice be issued to defendant No.1 through bailiff, whereas, to defendant No.2 through courier for 24.06.2016. Till the next date of hearing, the defendant No.1 shall not reimburse the payment in respect of above Letter of Credit to defendant No.2 and on the same time shall not release the original title documents to the plaintiff as well.

J U D G E

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