IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

Mr. Justice Arshad Hussain Khan
Mr. Justice Amjad Ali Sahito

First Appeal No.10 of 1998
First Appeal No.32 of 2003

Appellant [in both appeals]	:	Muslim Commercial Bank Limited through Mr. Asif Ali Khawaja, Advocate
Respondents [in both appeals]	:	M/s. Haji Fazal Mohammad & Sons and other through Mr. Rehman Aziz Malik, Advocate
Date of Hearing	:	19.10.2026
Date of Judgment	:	11.11.2026

J U D G M E N T

Amjad Ali Sahito, J-. Through this common judgment, we intend to dispose of First **Appeal No.10 of 1998 and First Appeal No.32 of 2003,** both arising out of disputes between Muslim Commercial Bank Limited (hereinafter referred to as the **"appellant-Bank")** and M/s. Haji Fazal Muhammad & Sons (hereinafter referred to as the **"respondents"),** in connection with documentary credit transactions for the import of skimmed milk powder from Germany.

2. First Appeal No.10 of 1998 has been preferred against the judgment dated 26.11.1997 passed by the learned Banking Court No.III, Karachi, in Suit No.2712 of 1993, whereby the appellant-Bank's suit for recovery was dismissed. First Appeal No.32 of 2003 assails the judgment and decree dated 28.01.2002 passed by the learned Banking Court No.I, Karachi, in Suit No.151 of 1994, whereby the respondents' suit was decreed for Rs.289,242/-, together with costs and future markup at the rate of 14% per annum from the date of institution of the suit until realization.

Facts and Proceedings:

3. The dispute arises from a commercial financing arrangement under which the appellant-Bank, pursuant to the respondents' application and agreement dated 20.06.1991, established an irrevocable documentary letter of credit bearing No.200/91 for US$97,605.80 in favour of M/s. Deutsche Milch-Kontor GmbH, Germany, for the import of 100 metric tons of skimmed spray milk powder, ADMI Standard Grade, at the stipulated rate of US$1,060 per metric ton, C&F Karachi. The facility was sanctioned up to Rs.3,500,000/- vide sanction advice dated 28.08.1991, and the respondents deposited Rs.159,424/- as margin money.

4. According to the appellant-Bank, the foreign supplier shipped the consignment and forwarded the relevant documents, including commercial invoices, bills of exchange, clean negotiable bills of lading and certificates relating to the goods, through regular banking channels. The appellant-Bank maintains that, having examined the documents and found them to be in apparent conformity with the terms of the credit, it honoured its irrevocable commitment by remitting the requisite foreign exchange to the negotiating bank.

5. Upon arrival of the consignment, the respondents were called upon to retire the documents, discharge the payment-against-documents liability and take delivery of the goods. They, however, declined to do so, raising objections concerning the alleged non-receipt of advance copies of invoices and non-negotiable bills of lading, as well as the form and issuing authority of certain certificates accompanying the shipping documents.

6. The respondents contended that the documents did not comply with the stipulated conditions of the letter of credit, particularly Clauses 15 to 19 and Clause 22. They maintained that the appellant-Bank had been informed of the alleged discrepancies through correspondence, including letters dated 07.09.1991 and 01.10.1991, but nevertheless proceeded to remit payment to the foreign supplier. According to them, the Bank's

conduct amounted to a breach of its obligations under the documentary credit and caused them financial loss.

7. Owing to the respondents' refusal to retire the documents and take delivery, the consignment remained in storage, attracting port, customs, demurrage and warehouse charges. The appellant-Bank asserts that, in order to prevent further deterioration of the perishable goods and mitigate its losses, it arranged for their sale through public auction after advertisements were published in daily Dawn and daily Jang on 07.02.1993.

8. The record further indicates that the respondents had proposed to lift the goods at Rs.500/- per bag and tendered a pay order for Rs.130,000/- in January 1993. The appellant-Bank maintains that the proposal was conditional and did not provide for clearance of the entire consignment or settlement of the outstanding liabilities. According to the Bank, the goods were ultimately sold to the highest bidder at Rs.204.50 per bag, and the net proceeds were adjusted against the outstanding liability, leaving an unrecovered balance.

First Appeal No.10 of 1998:

9. The appellant-Bank instituted Suit No.2712 of 1993 before the learned Banking Court No.III, Karachi, seeking recovery of Rs.1,573,953/- as the outstanding balance under the relevant payment-against-documents account, together with markup, liquidated damages and costs. The respondents contested the suit, principally on the ground that the shipping documents did not comply with the terms of the letter of credit and that the Bank had improperly honoured the documentary presentation.

10. Upon consideration of the evidence and the submissions of the parties, the learned Banking Court dismissed the suit vide judgment dated 26.11.1997, holding, inter alia, that the appellant-Bank had failed to comply with the stipulated requirements of the letter of credit. Aggrieved thereby, the appellant-Bank preferred First Appeal No.10 of 1998.

First Appeal No.32 of 2003:

11. In the meantime, the respondents instituted Suit No.151 of 1994 against the appellant-Bank, seeking recovery of Rs.2,359,424/-, comprising Rs.2,200,000/- claimed as damages and business losses and Rs.159,424/- deposited as margin money, together with markup and other relief. The claim for damages was founded upon the alleged breach of the documentary credit conditions and the Bank's subsequent disposal of the imported goods.

12. The learned Banking Court No.I, Karachi, dismissed the claim for damages of Rs.2,200,000/- for want of cogent evidence establishing actual loss. It nevertheless held that the Bank had breached the terms of the letter of credit and directed payment of Rs.289,242/-, comprising the margin money of Rs.159,424/- and the amount of Rs.130,000/- tendered by the respondents, together with costs and markup at the rate of 14% per annum from the date of institution of the suit until realization. Dissatisfied with the said judgment and decree, the appellant-Bank preferred First Appeal No.32 of 2003.

Submissions of the Parties:

13. Learned counsel for the appellant-Bank contended that the learned Banking Courts had misconstrued the nature of documentary credit transactions and failed to appreciate that the Bank's obligation was confined to examining the documents presented under the relevant credits, rather than investigating the quality of the goods or the underlying contract of sale. It was argued that the documents received through banking channels were examined with reasonable care and appeared to conform to the stipulated conditions.

14. Learned counsel further submitted that the objections concerning the advance dispatch of non-negotiable documents and the form or issuing authority of the certificates did not justify repudiation of the respondents' reimbursement obligations. Reliance was placed upon Articles 3, 4, 15 and 23 of the Uniform Customs and Practice for Documentary Credits, 1983 (UCP 400), and Sections 171, 176 and 211 of the Contract

Act, 1872. It was maintained that the Bank had lawfully disposed of the goods after giving reasonable notice and had duly adjusted the sale proceeds against the outstanding liability.

15. With regard to First Appeal No.32 of 2003, learned counsel argued that the learned Banking Court had erred in directing refund of the margin money and the amount tendered by way of pay order without reconciling the respondents' claims with the Bank's corresponding disbursements and outstanding dues.

16. Conversely, learned counsel for the respondents supported the impugned judgments, contending that the appellant-Bank had honoured the credits despite material discrepancies in the documents. It was submitted that the requisite certificates concerning the origin, quality, health, sanitation and chemical analysis of the goods had not been issued by the competent authorities and that the advance copies required under Clause 22 had not been dispatched in the prescribed manner.

17. Learned counsel further questioned the manner in which the consignment was auctioned, maintaining that the Bank had disregarded the respondents' offer to lift the goods at a higher price. On these grounds, dismissal of the Bank's recovery appeal and maintenance of the decree passed in favour of the respondents were sought.

18. We have heard learned counsel for the parties and examined the material available on record with their assistance.

Points for Determination

19. The controversy arising in these appeals essentially raises the following questions:

(i) Whether the appellant-Bank honoured the documentary credits in accordance with their stipulated terms and the applicable provisions of the Uniform Customs and Practice for Documentary Credits (UCP 400);

(ii) Whether the respondents were liable to reimburse the appellant-Bank for the amounts disbursed to the foreign supplier;

(iii) Whether the subsequent auction of the consignment was legally justified and whether

the sale proceeds were properly adjusted against the outstanding liability; and

(iv) Whether the dismissal of the appellant-Bank's recovery suit and the decree passed in favour of the respondents are sustainable in law.

Consideration and Findings

20. Since both appeals arise from the same banking transaction and involve interconnected questions concerning documentary compliance, contractual liability, disposal of the consignment and consequential monetary claims, the points formulated above are considered together, while addressing their respective legal implications.

21. The first question concerns the obligations of the appellant-Bank under the documentary credits and the applicable provisions of the Uniform Customs and Practice for Documentary Credits (UCP 400). A documentary credit constitutes an independent banking undertaking, distinct from the underlying contract of sale between the buyer and the foreign supplier. Under Articles 3 and 4 of UCP 400, banks deal with documents and not with the goods to which those documents relate. Consequently, the issuing bank is ordinarily neither responsible for the actual quality or condition of the goods nor concerned with disputes arising from the underlying commercial transaction. Its obligation is to examine the stipulated documents with reasonable care and ascertain whether they appear on their face to conform to the terms of the credit. The principle of autonomy, however, does not authorize a bank to disregard an express documentary condition or accept materially discrepant documents without lawful justification.

22. In the present case, the respondents/importing firm questioned the Bank's acceptance of the shipping documents on several grounds, including the alleged non-compliance with Clause 22 concerning direct dispatch of copies of the commercial invoice and non-negotiable bill of lading, the absence of the prescribed postal acknowledgment and certificate of dispatch, alleged deficiencies in the certificates relating to origin, sanitation, veterinary examination and chemical analysis, and

the disputed shipment dates under Clauses 9 and 11 of the credits. The appellant-Bank, on the other hand, maintained that the documents were accepted in accordance with the stipulated conditions and that the objections raised by the respondents either related to matters outside the Bank's responsibility or sought to introduce requirements not expressly incorporated in the credits.

23. Article 15 of UCP 400 requires banks to examine the documents with reasonable care to ascertain whether they appear on their face to conform to the terms of the credit. Article 23, as relied upon by the appellant-Bank, addresses the acceptance of certain documents where the credit does not specify the issuing authority. The application of these provisions necessarily depends upon the precise wording of the relevant credits and the contents of the documents presented. Where a particular issuing authority has not been prescribed, such a requirement cannot ordinarily be introduced by implication. Conversely, where the credit expressly stipulates a documentary condition, compliance therewith cannot be dispensed with merely because the Bank considers the condition ancillary or because the importing firm had knowledge of the shipment.

24. The principles governing documentary compliance have also been considered in *Gian Singh & Co. Ltd. v. Banque de l'Indochine* [1974] 2 All E.R. 754, *Equitable Trust Co. of New York v. Dawson Partners Ltd.* (1927) 27 Lloyd's Rep. 49 and *United Commercial Bank v. Bank of India*, AIR 1981 SC 1426. These authorities emphasize the importance of examining documents in accordance with the actual terms of the credit. Likewise, the decisions in *Ireland v. Livingston* (1872) L.R. 5 H.L. 395 and *Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty. Ltd.* [1973] A.C. 279, relied upon by the appellant-Bank concerning allegedly ambiguous instructions, cannot be applied without first determining whether the relevant provisions were in fact ambiguous. The controlling consideration remains the wording of the documentary credits and the evidence concerning their presentation and acceptance.

25. The learned Banking Courts were, therefore, required to identify the specific documentary conditions alleged to have been violated, examine the documents presented against those conditions and determine whether the appellant-Bank had honoured the credits in accordance with its contractual obligations and UCP 400. Neither the alleged defects in the quality of the goods nor the Bank's assertion that the documents were regular could, by themselves, conclusively determine the controversy. The findings on this issue must rest upon an examination of the relevant documents and the evidence available on record.

26. The second question concerns the respondents' liability to reimburse the appellant-Bank for the amounts remitted to the foreign supplier. Such liability cannot be determined merely from the fact that payment was made under the documentary credits. The Bank must establish that the disbursements were made in accordance with the governing contractual arrangements and the applicable documentary-credit requirements, or were otherwise lawfully authorized or accepted by the respondents. Once such entitlement is established, the respondents' liability would extend only to the amount legally recoverable after giving credit for all payments, securities realized and other proved adjustments. Conversely, any material non-compliance attributable to the Bank must be examined in determining the extent, if any, to which the respondents remain liable.

27. The third question relates to the subsequent auction of the consignment. The appellant-Bank maintained that the respondents failed to retire the shipping documents and take delivery of the goods, resulting in accumulating port, demurrage and storage charges, besides the risk of deterioration of the perishable consignment. It further asserted that the auction was publicly advertised and that the highest unconditional bid was accepted. The respondents, however, relied upon their offer to purchase the goods at Rs.500 per bag and the tender of a pay order for Rs.130,000, contending that the Bank nevertheless disposed of the consignment at an inadequate price.

28. Section 176 of the Contract Act, 1872, recognizes the right of a pawnee, upon default by the pawnor, either to sue for recovery of the debt while retaining the pledged goods as security or to sell the pledged goods after giving reasonable notice of the intended sale. The applicability of this provision, however, depends upon the legal character of the transaction and the rights held by the Bank in respect of the goods or documents of title. Where the provision is applicable, reasonable notice constitutes a statutory requirement. The mere existence of an outstanding liability or the Bank's apprehension of further loss does not, by itself, dispense with that requirement.

29. The legality of the auction must, therefore, be examined with reference to the contractual rights of the Bank, the nature of the security, the notice of intended sale, the condition and quantity of the goods, the terms of the respondents' offer, the bids received and the circumstances in which the sale was conducted. The respondents' offer of Rs.500 per bag cannot, without examination of its terms, be treated as conclusive evidence of the market value of the entire consignment. Equally, the Bank's assertion that the auction was publicly advertised does not, by itself, establish compliance with every applicable contractual or statutory requirement.

30. The explanation to Section 73 of the Contract Act, 1872, also recognizes the relevance of available means of mitigating loss arising from breach of contract. In assessing the parties' respective claims, consideration must therefore be given to the Bank's asserted efforts to prevent further accumulation of charges and the respondents' alleged failure to take delivery, without overlooking the Bank's obligation to account for the proceeds realized through disposal of the goods. The sale proceeds must, in any event, be brought into account while determining the net financial liability, so that no amount already realized is recovered a second time.

31. The fourth question concerns the sustainability of the impugned judgments and decrees. The Bank's recovery claim and the respondents' monetary claims arise from the same

transaction and cannot properly be determined in isolation. The amount remitted under the documentary credits, the margin money deposited by the respondents, any subsequent payments, the net auction proceeds and other proved adjustments are relevant to the determination of the amount, if any, ultimately payable by either party. Any claim for markup, liquidated damages or other charges must likewise be supported by the contractual terms, evidence and applicable law.

32. In First Appeal No.32 of 2003, the respondents had also claimed damages on account of the alleged negligence and breach of contractual obligations by the appellant-Bank. The learned Banking Court rejected that claim for want of cogent evidence establishing the alleged business loss. Having examined the findings recorded in the impugned judgment, we find no sufficient basis for interference with the rejection of that claim. The remaining monetary relief, however, requires consideration in conjunction with the underlying banking transaction, particularly the treatment of the margin money and the amount of Rs.130,000 tendered by the respondents. Their entitlement to refund or adjustment of these amounts cannot be determined without ascertaining the parties' respective liabilities and the amounts already realized or appropriated.

33. It follows from the foregoing discussion that the determination of the parties' respective monetary claims necessarily depends upon the resolution of the questions concerning documentary compliance, the Bank's entitlement to reimbursement, the legality of the auction and the consequential financial adjustments. The impugned judgments do not adequately address these interconnected questions in the light of the relevant contractual provisions, documentary evidence and applicable law. Consequently, the findings determining the parties' monetary rights cannot be sustained in their present form. At the same time, this Court cannot straightaway decree the Bank's recovery claim merely upon proof of disbursement, without first determining whether such disbursement was made in accordance with the documentary credits and whether the

amount claimed remains legally recoverable after adjustment of the sums already realized.

34. We are conscious that these proceedings have remained pending for a considerable period and that a remand should not ordinarily be directed merely to afford the parties another opportunity to improve their respective cases. Ordinarily, where the evidence on record is sufficient, the appellate Court should endeavour to decide the controversy finally. However, in the present case, the determination of the parties' respective rights requires a proper evaluation of the disputed documentary conditions, the circumstances surrounding the auction and the consequential financial adjustments, upon which adequate and definite findings have not been recorded in the impugned judgments. In these circumstances, instead of undertaking a fresh factual determination without the benefit of such findings, we consider it appropriate to remit the identified matters for reconsideration, strictly within the scope specified hereinafter and without permitting the parties to reopen matters already conclusively determined.

Conclusion

35. For the foregoing reasons, we are of the view that the impugned judgments and decrees, to the extent they determine the parties' respective monetary liabilities without adequately addressing the documentary-credit requirements, the legality of the auction and the consequential financial adjustments, require interference. However, the respondents' claim for damages, having been rejected for want of proof, does not warrant reconsideration.

36. Accordingly, **First Appeal No.10 of 1998 is partly allowed.** The judgment and decree dated 26.11.1997 passed by the learned Banking Court No.III, Karachi, in Suit No.2712 of 1993 are set aside, and the suit is remanded for fresh determination of the appellant-Bank's recovery claim in accordance with the observations recorded herein.

37. First Appeal No.32 of 2003 is also partly allowed. The judgment and decree dated 28.01.2002 passed by the learned Banking Court No.I, Karachi, in Suit No.151 of 1994 are set aside to the extent of the monetary relief granted to the respondents, which shall be reconsidered in conjunction with the appellant-Bank's recovery claim. The rejection of the respondents' claim for damages is maintained.

38. Upon remand, the learned Banking Courts concerned shall determine, on the basis of the evidence already recorded: (i) whether the documents complied with the respective credits and UCP 400 and whether the Bank was entitled to reimbursement; (ii) whether the auction was lawful and conducted in accordance with the applicable contractual and statutory requirements; (iii) the net amount, if any, recoverable by the Bank after all proved adjustments, including margin money, payments and auction proceeds; and (iv) the respondents' entitlement, if any, to refund or adjustment of the margin money, Rs.130,000 or other monetary relief already claimed.

39. The learned Banking Courts shall decide the remitted questions independently, strictly on the evidence already available on record, after affording the parties an opportunity of hearing. No fresh evidence shall be permitted merely to fill lacunae in either party's case, nor shall the respondents' claim for damages be reopened. Appropriate judgments and decrees shall be passed in accordance with law, ensuring that no amount is recovered or adjusted twice.

40. Considering the age of the litigation, the learned Banking Courts concerned shall endeavour to conclude the remanded proceedings preferably within six months from receipt of the record, without granting unnecessary adjournments.

41. Both appeals stand disposed of accordingly, with no order as to costs.

JUDGE

JUDGE

KAMRAN/PS