IN THE HIGH COURT OF SINDH AT KARACHI

PRESENT:

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

First Appeal No.11 of 1998
First Appeal No.33 of 2003

Appellant [in both appeals]	:	Muslim Commercial Bank Limited through Mr. Asif Ali Khawaja, Advocate
Respondents [in both appeals]	:	M/s. Aslam International Trading Corporation 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-. By this common judgment, we intend to dispose of First Appeal **No.11 of 1998 and First Appeal No.33 of 2003,** both arising out of the dispute between Muslim Commercial Bank Limited (hereinafter referred to as **"the appellant-Bank"**) and M/s. Aslam International Trading Corporation/Respondents (hereinafter referred to as **"the importing firm")**, concerning a documentary letter-of-credit transaction for the import of skimmed milk powder from Germany.

2. First Appeal No.11 of 1998 has been preferred by the appellant-Bank against the judgment dated 26.11.1997 passed by the learned Banking Court No.III, Karachi, in Suit No.2713 of 1993, whereby its recovery suit was dismissed. First Appeal No.33 of 2003 arises out of the judgment and decree dated 28.01.2002 passed by the learned Banking Court No.I, Karachi, in Suit No.152 of 1994, whereby the suit instituted by the importing firm against the appellant-Bank was decreed for Rs.289,242/-, together with costs and markup at the rate of 14% per annum from the date of institution of the suit until realization.

Facts and Proceedings:

3. The controversy originates from the establishment of an irrevocable documentary letter of credit in favour of M/s. Deutsche Milch-Kontor GmbH, Germany, for the import of 100 metric tons of skim spray milk powder, ADMI Standard Grade, at the agreed price of US$1,060 per metric ton, C&F Karachi. The appellant-Bank asserts that the credit was established at the request of the importing firm, that the shipping documents were received through regular banking channels, and that the stipulated payment was remitted to the foreign supplier against the documents presented. According to the appellant-Bank, the importing firm subsequently failed to retire the documents and take delivery of the consignment despite repeated demands. The importing firm, however, maintained that the documents did not comply with the stipulated terms of the credit and that the Bank had acted contrary to its contractual obligations by making payment despite the discrepancies brought to its notice.

4. The objections raised by the importing firm principally concerned the alleged non-dispatch of copies of the commercial invoice and non-negotiable bill of lading directly to the buyer within the stipulated period, as well as the form and issuing authority of certain certificates relating to the origin, quality, sanitation, veterinary examination and chemical analysis of the imported goods. The importing firm contended that these deficiencies constituted non-compliance with the terms of the credit and absolved it of the obligation to reimburse the Bank.

5. The appellant-Bank, on the other hand, maintained that the original negotiable shipping documents were received and examined in accordance with the applicable Uniform Customs and Practice for Documentary Credits **(UCP 400**), and that the objections subsequently raised did not justify repudiation of the importing firm's reimbursement obligations.

6. Upon the importing firm's failure to take delivery, the consignment remained in storage, resulting in the accumulation of port, demurrage and warehouse charges. The appellant-Bank

asserts that, after the importing firm failed to regularize the outstanding liability, it arranged for the disposal of the goods through public auction and appropriated the sale proceeds towards the outstanding balance.

7. The importing firm disputed the manner and price of disposal, contending that it had offered to lift the goods at Rs.500/- per bag, subject to customs duty and warehouse charges, and had tendered a pay order of Rs.130,000/- towards part payment. It alleged that the Bank failed to facilitate delivery and instead disposed of the consignment at an inadequate price, thereby causing it financial loss.

8. In **Suit No.2713 of 1993,** the appellant-Bank sought recovery of Rs.3,112,882/- as the outstanding balance under the payment-against-documents account, together with liquidated damages of Rs.622,580/-, markup and costs. The importing firm contested the claim, principally relying upon the alleged discrepancies in the documents and the Bank's subsequent handling of the consignment. The learned Banking Court No.III, Karachi, dismissed the suit vide judgment dated 26.11.1997, holding that the Bank had failed to comply with the stipulated requirements of the letter of credit. Aggrieved thereby, the appellant-Bank preferred First Appeal No.11 of 1998.

9. In the meantime, the importing firm instituted **Suit No.152 of 1994** against the appellant-Bank, claiming Rs.45,59,423/-, together with markup. The claim comprised Rs.1,59,423/- deposited as margin money and Rs.44,00,000/- allegedly representing loss of profit and business damages arising from the transaction.

10. The learned Banking Court No.I, Karachi, dismissed the claim for damages of Rs.44,00,000/- for want of cogent evidence establishing the alleged loss or the asserted increase in the market price of milk powder. Nevertheless, it held that the Bank had failed to comply with the terms of the letter of credit and decreed the suit for Rs.289,242/-, representing the margin money and the amount of Rs.130,000/- tendered by the

importing firm, together with markup at the rate of 14% per annum from the date of institution of the suit until realization. The appellant-Bank, being dissatisfied with the said judgment and decree, preferred First Appeal No.33 of 2003.

Submissions of the Parties:

11. Learned counsel for the appellant-Bank contended that the learned Banking Courts failed to appreciate the autonomous nature of documentary credits and the limited scope of a bank's obligation when examining documents presented under such credits. It was argued that the Bank was required to examine the documents with reasonable care to ascertain whether they appeared on their face to conform to the stipulated terms and conditions, and was not required to investigate matters concerning the underlying contract of sale or impose documentary requirements that had not been expressly incorporated into the credit.

12. Learned counsel further submitted that the original negotiable documents were regular on their face and that the objections regarding the dispatch of additional non-negotiable copies and the form of the accompanying certificates did not justify refusal to reimburse the Bank. The appellant-Bank also maintained that the auction was conducted to mitigate accumulating losses and that the sale proceeds had been duly credited towards the outstanding liability.

13. With regard to the decree passed in Suit No.152 of 1994, learned counsel for the appellant-Bank contended that the learned Banking Court failed to reconcile the margin money and the pay order with the Bank's outstanding claim. It was argued that the Bank could not be directed to refund amounts held as security or appropriated towards the transaction without first determining the liabilities arising from the foreign exchange disbursed under the letter of credit. The award of markup and costs was also challenged as being inconsistent with the Bank's asserted contractual and statutory entitlements.

14. Conversely, learned counsel for the importing firm supported the impugned judgments, maintaining that the Bank had honoured the credit despite material discrepancies in the documents. It was contended that the Bank had been specifically notified of the objections through letters dated 07.09.1991 and 01.10.1991, yet proceeded to make payment to the foreign supplier. Learned counsel further disputed the auction proceedings and maintained that the importing firm had suffered loss as a consequence of the Bank's conduct. Accordingly, dismissal of the appeals was sought.

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

16. The principal questions requiring determination are whether the appellant-Bank complied with the terms of the documentary credit when honouring the documents presented by the foreign supplier; whether the importing firm remained liable to reimburse the amounts disbursed by the Bank; whether the subsequent sale of the consignment was justified in the circumstances; and whether the monetary relief granted by the learned Banking Court No.I can be sustained without accounting for the respective liabilities and adjustments arising from the same transaction.

Nature and Scope of a Documentary Credit:

17. 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.

18. 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 rather than goods and are ordinarily not concerned with their quality or condition. However, the issuing bank is required 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 does not authorize the acceptance of materially discrepant documents contrary to express documentary conditions.

19. In the present case, the 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 within four days of shipment, together with the prescribed postal acknowledgment and certificate of dispatch; alleged deficiencies in the certificates relating to origin, sanitation, veterinary examination and chemical analysis; and disputed shipment dates under Clauses 9 and 11 of the credit. The appellant-Bank, on the other hand, maintained that the documents complied with the stipulated conditions and that the importing firm sought to introduce requirements not expressly incorporated in the credit.

20. Article 15 of UCP 400 prescribes the standard of reasonable care in examining documents, whereas Article 23, as relied upon by the appellant-Bank, addresses the acceptance of certain documents where the credit does not specify their issuing authority. Accordingly, a requirement not expressly stipulated cannot ordinarily be introduced by implication, nor can an express documentary condition be disregarded. The principles discussed 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, likewise emphasize examination of documents in accordance with the actual terms of the credit. The alleged ambiguity concerning shipment instructions must also be determined from the wording of the relevant clauses rather than assumed merely because the parties advance different interpretations.

21. The learned Banking Courts were, therefore, required to examine the alleged discrepancies against the stipulated documentary conditions and determine whether the appellant-Bank had honoured the credit in accordance with its contractual obligations and UCP 400. Neither the importing firm's objections concerning the quality of the goods nor the Bank's assertion that the documents were regular could, by themselves, conclusively determine the controversy. The findings must be supported by an examination of the relevant documentary evidence.

22. The importing firm's liability to reimburse the appellant-Bank cannot be determined merely from the fact that payment was made to the foreign supplier. The Bank must establish that the disbursements were made in accordance with the documentary credit and governing contractual arrangements, or were otherwise lawfully authorized or accepted by the importing firm. Once such entitlement is established, liability would extend only to the amount legally recoverable after giving credit for all payments and other proved adjustments.

23. The next question concerns the auction of the consignment. The appellant-Bank maintained that the importing firm failed to retire the 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 the highest unconditional bid accepted. The importing firm, however, relied upon its 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.

24. 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 such goods after giving reasonable notice of the intended sale. The applicability of this provision depends upon the legal character of the transaction and the Bank's rights in respect of the goods or documents of title. Where applicable, the

requirement of reasonable notice cannot be dispensed with merely because the Bank apprehended further financial loss.

25. The legality of the auction must, therefore, be examined with reference to the Bank's contractual rights, the nature of the security, the notice given, the condition and quantity of the goods, the terms of the importing firm's offer and the circumstances surrounding the sale. The offer of Rs.500 per bag cannot, without examination of its terms, be treated as conclusive evidence of the market value of the consignment. Equally, public advertisement of the auction does not, by itself, establish compliance with every applicable legal requirement. The explanation to Section 73 of the Contract Act, 1872, also requires consideration of the reasonable measures available to mitigate loss arising from breach of contract.

26. In First Appeal No.11 of 1998, the appellant-Bank seeks recovery of Rs.3,112,882 as the outstanding balance under the payment-against-documents account, besides other amounts claimed in the suit. Its entitlement cannot be determined merely from the gross amount remitted to the foreign supplier. The account must reflect the actual disbursements, margin money, part-payments, net auction proceeds and all other proved adjustments. Any markup, cost of funds or additional charges must likewise be supported by the relevant contractual terms and applicable law.

27. In First Appeal No.33 of 2003, the importing firm was granted monetary relief of Rs.289,242, stated to comprise margin money of Rs.159,423 and a pay order of Rs.130,000, together with markup at 14% per annum. The learned Banking Court, however, rejected its claim for damages of Rs.4,400,000 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, including the entitlement to markup, requires consideration in conjunction with the Bank's

recovery claim and the adjustments arising from the same transaction.

28. The determination of the parties' respective monetary claims necessarily depends upon findings 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 and documentary evidence. Consequently, the findings determining the parties' monetary rights cannot be sustained in their present form. Equally, the Bank's recovery claim cannot be decreed merely upon proof of disbursement without establishing its legal entitlement to reimbursement.

29. We are conscious that these proceedings have remained pending for a considerable period and that a remand should not ordinarily be directed where the appellate Court can finally determine the controversy on the available evidence. However, the absence of adequate findings on material disputed questions concerning documentary compliance, the auction and financial adjustments makes a restricted remand appropriate in the circumstances of the present case. Such reconsideration shall remain confined to the identified issues and shall not afford either party an opportunity to improve its case or reopen matters already concluded.

Conclusion

30. For the foregoing reasons, the impugned judgments and decrees, insofar as they determine the parties' respective monetary liabilities, cannot be sustained and require reconsideration within the limits specified hereinafter. The rejection of the importing firm's claim for damages, however, calls for no interference.

31. Accordingly, **First Appeal No.11 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.2713 of

1993 are set aside, and the suit is remanded to the learned Banking Court concerned for fresh determination of the appellant-Bank's recovery claim in accordance with the observations recorded herein.

32. First Appeal No.33 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.152 of 1994 are set aside to the extent of the monetary relief granted to the importing firm, which shall be reconsidered in conjunction with the appellant-Bank's recovery claim. The finding rejecting the importing firm's claim for damages is maintained and shall not be reopened.

33. Upon remand, the learned Banking Courts concerned shall, strictly on the basis of the evidence already recorded, determine whether the appellant-Bank complied with the terms of the documentary credit and UCP 400, whether it was legally entitled to reimbursement and disposal of the consignment through auction, and the net amount, if any, recoverable by either party after accounting for all proved payments, margin money, auction proceeds and other adjustments, together with such markup or charges as may be permissible under the contractual terms and applicable law.

34. The learned Banking Courts concerned shall determine the remitted questions independently, strictly within the scope of the remand and on the basis of 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 importing firm's claim for damages be reopened. Appropriate judgments and decrees shall be passed in accordance with law, ensuring that all proved payments and adjustments are duly accounted for without duplication. The observations recorded herein shall not be construed as conclusive findings on documentary compliance, the legality of the auction or the Bank's entitlement to recovery.

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

JUDGE

JUDGE

KAMRAN/PS