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STATE BANK OF INDIA AND ANR.

v.

M/S. EMMSONS INTERNATIONAL LTD. AND ANR.

(Civil Appeal No. 1709 of 2007)

B

AUGUST 18, 2011

[AFTAB ALAM AND R.M. LODHA, JJ.]

*Bank/Banking: Letter of credit – Held: Where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate – A contract is concluded between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller – Under an irrevocable credit, the issuing bank gives an unequivocal and binding undertaking to the seller that it will pay against documents/bills drawn in compliance with the terms of credit – A draft with accompanying documents must be in strict accord with the letter of credit – If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit – In the instant case, second respondent placed a purchase order to the seller for Rs. 43 lacs – Letter of credit was established by the issuing bank in favour of the seller – Issuing bank received negotiated documents under the letter of credit from ‘negotiating bank’ and pointed out discrepancies – Monetary claim was filed by seller against the issuing Bank and the advising Bank – Trial Court dismissed the seller’s claim, however, High Court granted a decree to the seller as prayed in the suit – The order of the High Court was made ignoring and overlooking the finding of the trial court that the seller accepted the encashment of bill and document on collection basis – High Court was required to address itself to the said issue which surely had bearing on the final outcome of the case – It failed to follow the fundamental rule governing the exercise of its*

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*jurisdiction u/s.96, CPC that where the first appellate court reverses the judgment of the trial court, it is required to consider all the issues of law and fact – This flaw vitiated the entire judgment of the High Court – Judgment of the High Court set aside and First Appeal restored for re-hearing and fresh decision – Code of Civil Procedure, 1908 – s.96.*

The second respondent-buyer placed a purchase order on first respondent-seller for supply of 2000 MT of Syrian Rock Phosphate for Rs.43 lacs. The payment terms provided 'against 180 days issuance of a letter of credit'. At the request of buyer, a letter of credit for Rs.43 lacs was established by appellant no.1 (issuing bank) in favour of the seller. Appellant no.2 was the advising bank. The seller supplied the material and the buyer was said to have accepted the documents. On July 8, 1997, the issuing bank received negotiated documents under the letter of credit from negotiating bank for payment. On that day itself, the issuing bank pointed out the discrepancies to the negotiating bank that the certificate from negotiating bank mentioning all the terms of credit were not furnished. The issuing bank, thus, advised the negotiating bank to rectify the discrepancies within seven days of submission of documents. In the correspondence between the negotiating bank and the issuing bank, the negotiating bank took stand that the discrepancies notified by the issuing bank were rectified and the documents complied with the requirement of credit. However issuing bank continued to insist that the documents were discrepant and were not acceptable to it. The seller filed a monetary suit against the issuing bank and advising bank. The buyer was impleaded as formal party. The trial court held that the issuing bank had properly dishonoured the documents relating to the letter of credit and the seller was not entitled to get any amount or interest from the issuing bank and the advising bank on the basis of that letter of credit. The trial court also

A concluded that seller accepted the encashment of bill and document on collection basis. In light of these findings, the trial court dismissed the seller's claim. The seller filed appeal before the High Court. The High Court allowed the seller's appeal. The instant appeal was filed challenging  
B the order of the High Court.

**Disposing of the appeal, the Court**

C Held: 1. The legal position is fairly well-settled that a draft with accompanying documents must be in strict  
accord with the letter of credit. If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit. [Para 13] [446-D-E]

D *United Commercial Bank v. Bank of India and others* (1981) 2 SCC 766 – relied on.

E 2. Where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate. A contract is concluded  
F between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller. Under an irrevocable credit, the issuing bank gives an unequivocal and binding undertaking to the seller that it will pay against documents/bills drawn in compliance with the terms of credit. [Paras 14, 16] [447-B, D]

*Lord Diplock in Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty. Ltd. (1973) AC 279 – referred to.*

G 3. The issue no. 5 framed by the trial court was whether the seller accepted the encashment of bill and document on collection basis. It cannot be said that issue no. 5 was immaterial or finding of the trial court on that issue was inconsequential. The High Court did not  
H advert to issue no.5 at all nor did it upset or consider the

finding of the trial court on that issue. The High Court was hearing the first appeal and as a first appellate court it ought to have considered and addressed itself to all the issues of fact and law before setting aside the judgment of the trial court. The judgment of the High Court suffered from a grave error as it ignored and overlooked the said finding of the trial court. The High Court was required to address itself to issue no. 5 which surely had bearing on the final outcome of the case. The High Court failed to follow the fundamental rule governing the exercise of its jurisdiction under Section 96 of the Code of Civil Procedure, 1908 that where the first appellate court reverses the judgment of the trial court, it is required to consider all the issues of law and fact. This flaw vitiated the entire judgment of the High Court. The judgment of the High Court, therefore, cannot be sustained. The first appeal is restored for rehearing and fresh decision. [Paras 18, 20, 26, 27] [450-A, D, F; 452-E-G]

*Santosh Hazari v. Purushottam Tiwari (Deceased) by L.Rs.* (2001) 3 SCC 179; 2001 (1) SCR 948; *Madhukar and Others v. Sangram and Others* (2001) 4 SCC 756; 2001 (3) SCR 138; *H.K.N. Swami v. Irshad Basith (Dead) by LRs.* (2005) 10 SCC 243; *Jagannath v. Arulappa and Anr.* (2005) 12 SCC 303; *Chinthamani Ammal v. Nandagopal Gounder and Anr.* (2007) 4 SCC 163; 2007 (2) SCR 903 – relied on.

*Halsbury's Laws of England; Davis' Law Relating To Commercial Letters of Credit*, 2nd Edn. (at page 76); *Paget's Law of Banking* 8th Edn. (at page 648) – referred to.

**Case Law Reference:**

(1981) 2 SCC 766	relied on	Para 13
(1973) AC 279	referred to	Para 15
2001 (1) SCR 948.	relied on	Para 21

A	2001 (3) SCR 138	relied on	Para 22
	(2005) 10 SCC 243	relied on	Para 23
	(2005) 12 SCC 303	relied on	Para 24
B	2007 (2) SCR 903	relied on	Para 25

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1709 of 2007.

C From the Judgment & Order dated 11.11.2006 of the High court of Madhya Pradesh in First Appeal No. 225 of 2002.

R.K. Sanghi (for Anil Kumar Tandale) for the Appellants.

Shyam Divan, C.D. Mulherkar, S.S. Khemka (for Punit Dutt Tyagi) for the Respondents.

D The Judgment of the Court was delivered by

E **R.M. LODHA, J.** 1. This civil appeal, by special leave, is from the judgment and decree of the Madhya Pradesh High Court whereby the Division Bench of that Court allowed the first appeal of the present 1st respondent—M/s. Emmsons International Ltd.—and set aside the judgment and decree of the trial court (First Additional District Judge, Bhopal) and decreed the 1st respondent's monetary claim.

F 2. Unialkem Fertilizers Limited—2nd respondent in this appeal (hereinafter referred to as 'the buyer') placed a purchase order on M/s. Emmsons International Limited (hereinafter referred to as 'the seller') for supply of 2000 MT of Syrian Rock Phosphate at the rate of Rs. 2100/- per metric ton  
 G for an aggregate amount of Rs. 43,86,411/-. The payment terms provided 'against 180 days issuance of letter of credit'. On June 18, 1997, at the request of the buyer, a letter of credit for Rs. 43,86,411/- was established by the appellant No. 1 — State Bank of India, Industrial Finance Branch, Bhopal (hereinafter referred to as 'the issuing bank') in favour of the seller; the  
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appellant No. 2 — State Bank of India, New Delhi Main Branch, A  
New Delhi being the advising Bank. The seller supplied the  
material vide sale invoice, high seas delivery, bills of lading,  
etc. and the buyer is said to have accepted the documents.

3. The letter of credit established by the issuing bank, inter B  
alia, made the following stipulations:

" . . . . . THIS DOCUMENTARY CREDIT WHICH IS  
AVAILABLE BY NEGOTIATION OF YOUR DRAFT AT  
180 DAYS FROM DESPATCH DRAWN FOR 100.00%  
OF INVOICE VALUE ON UNIALKEM FERTILIZERS LTD., C  
E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL,  
462 016 BEARING THE CLAUSE "DRAWN UNDER  
DOCUMENTARY CREDIT NO. 0192097 LC000087 OF  
STATE BANK OF INDIA, INDUSTRIAL FINANCE  
BRANCH, GR. FLOOR, L.H.O. PREMISES, D  
HOSHANGABAD ROAD, BHOPAL - 462 011 (INDIA)."  
ACCOMPANIED BY DOCUMENTS LISTED IN  
ATTACHED SHEET (S) EVIDENCING DISPATCH OF  
GOODS AS PER THE ATTACHED SHEETS.

FOR LIST OF REQUIRED DOCUMENTS, E  
MERCHANDISE DESCRIPTION AND OTHER  
INSTRUCTIONS PLEASE SEE THE ATTACHED  
CONTINUATION SHEETS WHICH FORM AN  
INTEGRAL PART OF THIS CREDIT.

SHIPMENT FROM : SYRIA TO KANDLA, INDIA F

SHIPMENT TERMS : CIF

PARTIAL SHIPMENT : ALLOWED G

TRANSSHIPMENT : NOT ALLOWED

INSTRUCTION TO THE ADVISING BANK:

- ALL BANK CHARGES (OTHER THAN ISSUING H

A BANK CHARGES) ARE FOR ACCOUNT OF BENEFICIARY.

- *DISCREPANT DOCUMENTS TO BE SENT STRICTLY ON COLLECTION BASIS.*

B - ALL DOCUMENTS TO INDICATE L/C NO. 0192097 LC 000087 AND DATE 18/06/97.

- NEGOTIATIONS UNDER THIS CREDIT ARE RESTRICTED TO STATE BANK OF INDIA, NEW DELHI, MAIN BRANCH, 11, SANSAD MARG, POST BOX NO. 430, NEW DELHI – 110 001.

C

- *EXCEPT IN SO FAR AS OTHERWISE EXPRESSEDLY STATED THIS DOCUMENTARY CREDIT IS SUBJECT TO THE UNIFORM CUSTOMS AND PRACTICES FOR DOCUMENTARY CREDITS (UCP) (1993 REVISION) OF THE INTERNATIONAL CHAMBERS OF COMMERCE (PUBLICATION NO. 500)*

D

E WE HEREBY ENGAGE WITH DRAWERS AND/OR BONAFIDE HOLDERS THAT *DRAFT DRAWN AND NEGOTIATED IN CONFORMITY WITH THE TERMS OF THIS CREDIT WILL BE DULY HONOURED ON PRESENTATION AND THAT DRAFTS ACCEPTED WITHIN THE TERMS OF THIS CREDIT WILL BE DULY HONOURED AT MATURITY. THE AMOUNT OF EACH DRAFT MUST BE ENDORSED ON THE REVERSE OF THIS CREDIT BY THE NEGOTIATION BANK....."*

F

G *(Emphasis supplied by us)*

4. The terms of Letter of Credit were amended on June 23, 1997 to the following effect :

H "AT THE REQUEST OF THE APPLICANT UNIALKEM

FERTILIZERS LTD., E-5 PLOT NO. 4, RAVI SHANKAR NAGAR, BHOPAL – 462 016. WE HAVE TODAY AMENDED OUR CAPTIONED LETTER OF CREDIT AS UNDER :

FIRST PAGE OF LETTER OF CREDIT LINE SECOND TO READ AS : NEGOTIATION OF YOUR DRAFT AT 180 DAYS FROM THE DATE OF DELIVERY ORDER DATED 18/06/97 INSTEAD OF EXISTING PLEASE MAKE THE FOLLOWING AMENDMENTS TO ATTACHED SHEET NO. 1 OF L/C POINT NO. 01 TO BE DELETED POINT NO. 02 TO BE DELETED POINT NO. 04 TO READ AS COPY OF CERTIFICATE OF SYRIAN ORIGIN ISSUED BY CHAMBER OF COMMERCE INSTEAD OF EXISTING. POINT NO. 05 TO READ AS COPY OF CERTIFICATE OF QUALITY AND QUANTITY ISSUED BY CHAMBER OF COMMERCE INSTEAD OF EXISTING POINT NO. 12 TO READ AS DRAFT DRAWN UNDER THIS LETTER OF CREDIT ARE NEGOTIABLE BY THE STATE BANK OF INDIA, MAIN BRANCH, NEW DELHI AND ORIENTAL BANK OF COMMERCE, OVERSEAS BANK, NEHRU PLACE, NEW DELHI ALSO INSTEAD OF EXISTING.

ALL OTHER TERMS AND CONDITIONS REMAIN UNCHANGED.”

*(Emphasis supplied by us)*

5. On July 8, 1997, the issuing bank received negotiated documents under the letter of credit from Oriental Bank of Commerce (hereinafter to be referred as 'negotiating bank') for payment. On that day itself, the issuing bank pointed out the following discrepancies to the negotiating bank :

- (i) certificate from the negotiating bank mentioning all the terms of credit have not been furnished;



- A (ii) the certificate of Syrian Origin is not issued by Chamber of Commerce.

The issuing bank, thus, advised the negotiating bank to rectify the discrepancies within seven days of submission of documents.

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6. Thereafter, between July 10, 1997 and February 7, 1998, the correspondence ensued through telegrams and letters between the negotiating bank and the issuing bank. According to the negotiating bank, the discrepancies notified by the issuing bank were rectified and the documents complied with the requirement of the credit. On the other hand, the issuing bank continued to insist that the documents were discrepant; the documents presented were not acceptable to it and it was holding the documents on collection basis at the risk and responsibility of the negotiating bank.
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- D

7. It was then that the seller brought an action by way of a summary suit for a decree in the sum of Rs. 63,74,356/- (principal amount/ of Rs. 43,86,411/- and interest of Rs. 19,87,945/-) together with the interest at the rate of 18 per cent per annum from the date of the suit to the date of decree and thereafter the interest at the same rate on decretal amount till realization against the issuing bank and the advising bank. The buyer was impleaded as a formal party.
- E

8. The issuing bank (defendant no. 1) made an application for leave to defend which was granted by the trial court. The issuing bank then filed written statement justifying its action of not honouring the credit on diverse grounds, namely; (i) the certificate of origin issued by Chamber of Commerce was different from the certificate of origin dated March 30, 1997 issued by the supplier of the material; (ii) neither the description of goods nor the quantity or weight matched with each other in the above documents; (iii) the certificate of origin has been issued in favour of MMTC and not in favour of the seller; (iv) at the request of the negotiating bank, the documents were
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- G
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retained by it but only on collection basis in order to remit the amount after collecting the same from the buyer and (v) it has acted in accord with Uniform Customs and Practice for Documentary Credits (for short, 'UCP500').

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9. On the pleadings of the parties, the trial court framed the following five issues :

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"Issue No. 1. Whether respondent Nos. 1 & 2 have dishonoured the documents relating to the "letter of credit" against the rules and practice?

C

Issue No. 2. Whether applicant is eligible to get Rupees 43,86,411/- and 18 percent interest p.a. over it from respondent Nos. 1 & 2 on the basis of letter of credit given by them?

D

Issue No. 3. Assistance and expenses?

Issue No. 4. Whether respondent is eligible to get Rs.14,258/- as handling/collection fee from applicant?

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Issue No. 5. Whether applicant has accepted the encashment of bill and document on collection basis?"

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It may be noted that trial court has referred to the seller as applicant and the issuing bank (defendant no. 1) and the advising bank (defendant no. 2) as respondent nos. 1 and 2 respectively.

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10. The parties tendered oral as well as documentary evidence in support of their respective case.

11. The trial court after viewing the evidence and hearing the arguments held that the issuing bank has properly

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A dishonoured the documents relating to the letter of credit and the seller was not entitled to get any amount or interest from the issuing bank and the advising bank on the basis of that letter of credit. The trial court has also concluded that seller accepted the encashment of bill and document on collection basis. In light  
 B of these findings, the trial court vide its decision dated February 4, 2002 dismissed the seller's claim.

12. The seller filed first appeal against the judgment and decree of the trial court before the High Court of Madhya Pradesh. As noted above, the Division Bench of that Court  
 C allowed the seller's appeal and granted a decree to the seller as prayed in the suit.

13. The legal position appears to be fairly well-settled that a draft with accompanying documents must be in strict accord  
 D with the letter of credit. If the documents presented comply with the terms of the credit, the issuing bank must honour its obligation in accordance with the terms of credit. In *United Commercial Bank v. Bank of India and others*<sup>1</sup>, this Court referred to few decided cases of the English Courts, Halsbury's  
 E Laws of England and also couple of books on the subject by eminent authors—Davis' Law Relating To Commercial Letters of Credit, 2nd Edn. (at page 76) and Paget's Law of Banking, 8th Edn. (at page 648)—and it was held that the documents tendered by the seller must comply with the terms of the letter  
 F of credit and that the banker owes a duty to the buyer to ensure that the buyer's instructions relative to the documents against which the letter of credit is to be honoured are complied with. It was stated that the description of the goods in the relative bill of lading must be the same as the description in the letter  
 G of credit, that is, the goods themselves must in each case be described in identical terms, even though the goods differently described in the two documents are, in fact, the same. The Court reiterated, ' . . . . . a bank issuing or confirming a letter of credit is not concerned with the underlying contract between

H 1. (1981) 2 SCC 766

the buyer and seller. Duties of a bank under a letter of credit are created by the document itself, but in any case it has the power and is subject to the limitations which are given or imposed by it, in the absence of the appropriate provisions in the letter of credit'. A

14. Where the customer of bank instructs the bank to open a credit, the bank acts at its peril if it departs from the precise terms of the mandate. B

15. Lord Diplock in *Commercial Banking Co. of Sydney Ltd. v. Jalsard Pty. Ltd.*<sup>2</sup> stated at page 286 of the Report that the issuing banker and his correspondent bank have to make decisions as to whether a document which has been tendered by the seller complies with the requirements of a credit. C

16. It needs no emphasis that a contract is concluded between the issuing bank and the seller no sooner the bank issues the credit and communicates it to the seller. Under an irrevocable credit the issuing bank gives an unequivocal and binding undertaking to the seller that it will pay against documents/bills drawn in compliance with the terms of credit. D

17. The relevant clauses of Articles 13, 14 and 19 of UCP 500 read as under: E

"Article 13.

#### Standard for Examination of Documents

- a Banks must examine all documents stipulated in the Credit with reasonable care, to ascertain whether or not they appear, on their face, to be in compliance with the terms and conditions of the Credit. Compliance of the stipulated documents on their face with the terms and conditions of the Credit, shall be determined by international standard banking practice as reflected in these Articles. Documents which appear on their face to F  
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2. (1973) AC 279.

A be inconsistent with one another will be considered as not appearing on their face to be in compliance with the terms and conditions of the Credit.

B Documents not stipulated in the Credit will not be examined by banks. If they receive such documents, they shall return them to the presenter or pass them on without responsibility.

b The Issuing Bank, the Confirming Bank, if any, or a Nominated Bank acting on their behalf, shall each have a reasonable time, not to exceed seven banking days following the day of receipt of the documents, to examine the documents and determine whether to take up or refuse the documents and to inform the party from which it received the documents accordingly.

D c . . . . .

Article 14.

Discrepant Documents and Notice

E a . . . . .

b Upon receipt of the documents the Issuing Bank and/or Confirming Bank, if any, or a Nominated Bank acting on their behalf, must determine on the basis of the documents alone whether or not they appear on their face to be in compliance with the terms and conditions of the Credit. If the documents appear on their face not to be in compliance with the terms and conditions of the Credit, such banks may refuse to take up the documents.

G c If the Issuing Bank determines that the documents appear on their face not to be in compliance with the terms and conditions of the Credit, it may in its sole judgement approach the Applicant for a waiver of the discrepancy(ies). This does not, however,

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extend the period mentioned in sub. Article 13 (b). A

d. i. . . . .

ii. Such notice must state all discrepancies in respect of which the bank refuses the documents and must also state whether it is holding the documents at the disposal of, or is returning them to, the presenter. B

iii. . . . .

e If the Issuing Bank and/or Confirming Bank, if any, fails to act in accordance with the provisions of this Article and/or fails to hold the documents at the disposal of, or return them to the presenter, the Issuing Bank and/or Confirming Bank, if any, shall be precluded from claiming that the documents are not in compliance with the terms and conditions of the Credit. C  
D

f . . . . .

Article 19.

Bank-to-Bank Reimbursement Arrangements E

a . . . . .

b Issuing Banks shall not require a Claiming Bank to supply a certificate of compliance with the terms and conditions of the Credit to the Reimbursing Bank. F

c . . . . .

d . . . . .

e . . . . .” G

18. In light of the above legal position, we heard Mr. R.K. Sanghi, learned counsel for the appellants and Mr. Shyam Divan, learned senior counsel for the 1st respondent for some time. In the course of hearing, however, it transpired that the H

A High Court in its judgment that runs into 56 foolscap pages while reversing the judgment of the trial court, has not at all adverted to issue no. 5 framed by the trial court nor it considered or upset the finding of the trial court on that issue.

B 19. Mr. Shyam Divan, learned senior counsel for the seller - 1st respondent fairly stated ~~that the finding on issue no. 5 recorded by the trial court has not at all been considered in the impugned judgment although, he strenuously urged that once the discrepancies on the basis of which the issuing bank refused the documents were rectified and the time allowed for encashment had expired, the issuing bank was obliged to honour the letter of credit and the case set up by the issuing bank that the seller had accepted the encashment of bill and document on collection basis was false and frivolous.~~

C 20. Having regard to the controversy set up by the parties in the course of trial, in our view, it cannot be said that issue no. 5 is immaterial or finding of the trial court on that issue is inconsequential. The High Court was hearing the first appeal and, as a first appellate court it ought to have considered and addressed itself to all the issues of fact and law before setting aside the judgment of the trial court. The judgment of the High Court suffers from a grave error as it ignored and overlooked the finding of the trial court on issue no. 5 that the seller accepted the encashment of bill and document on collection basis. The High Court was required to address itself to issue no. 5 which surely had bearing on the final outcome of the case.

21. In *Santosh Hazari v. Purushottam Tiwari (Deceased)* by L.Rs.<sup>3</sup>, this Court held (at pages 188-189) as under :

G ".....The appellate court has jurisdiction to reverse or affirm the findings of the trial court. First appeal is a valuable right of the parties and unless restricted by law, the whole case is therein open for rehearing both on questions of fact and law. The judgment of the appellate court must, therefore, reflect its conscious application of

H 3. (2001) 3 SCC 179.

mind and record findings supported by reasons, on all the issues arising along with the contentions put forth, and pressed by the parties for decision of the appellate court. ... while reversing a finding of fact the appellate court must come into close quarters with the reasoning assigned by the trial court and then assign its own reasons for arriving at a different finding. This would satisfy the court hearing a further appeal that the first appellate court had discharged the duty expected of it.....”

22. The above view has been followed by a 3-Judge Bench decision of this Court in *Madhukar and Others v. Sangram and Others*<sup>4</sup>, wherein it was reiterated that sitting as a court of first appeal, it is the duty of the High Court to deal with all the issues and the evidence led by the parties before recording its findings.

23. In the case of *H.K.N. Swami v. Irshad Basith (Dead) by LRs*<sup>5</sup>, this Court (at pages 243-244) stated as under :

“The first appeal has to be decided on facts as well as on law. In the first appeal parties have the right to be heard both on questions of law as also on facts and the first appellate court is required to address itself to all issues and decide the case by giving reasons. Unfortunately, the High Court, in the present case has not recorded any finding either on facts or on law. Sitting as the first appellate court it was the duty of the High Court to deal with all the issues and the evidence led by the parties before recording the finding regarding title.....”.

24. Again in *Jagannath v. Arulappa and Another*<sup>6</sup> while considering the scope of Section 96 of the Code of Civil Procedure, 1908, this Court (at pages 303-304) observed as follows :

4. (2001) 4 SCC 756.

5. (2005) 10 SCC 243.

6. (2005) 12 SCC 163.



A "2. A court of first appeal can reappreciate the entire  
 evidence and come to a different conclusion. In the  
 present case, we find that the High Court has not adverted  
 to many of the findings which had been recorded by the  
 trial court. For instance, while dismissing the suits filed by  
 B the respondents, the trial court had recorded a finding on  
 Issue 5 that the defendant-appellant had taken actual  
 possession of the suit properties in Execution Petition No.  
 137 of 1980 arising out of OS No. 224 of 1978. Without  
 reversing this finding, the High Court simply allowed the  
 appeals and decreed the suits filed by the plaintiff-  
 C respondents in toto. Similarly, there are other issues on  
 which findings recorded by the trial court have not been  
 set aside by the High Court. The points involved in the  
 appeals before the High Court required a deeper  
 D consideration of the findings recorded by the trial court as  
 well as the evidence and the pleadings on record."

E 25. The decided cases of this Court in *Jagannath*<sup>6</sup> and  
*H.K.N. Swami*<sup>5</sup> were noticed by this Court in a later decision  
 in the case of *Chinthamani Ammal v. Nandagopal Gounder*  
*and Another*<sup>7</sup>.

F 26. In our view, the High Court failed to follow the  
 fundamental rule governing the exercise of its jurisdiction under  
 Section 96 of the Code of Civil Procedure, 1908 that where  
 the first appellate court reverses the judgment of the trial court,  
 it is required to consider all the issues of law and fact. This flaw  
 vitiates the entire judgment of the High Court. The judgment of  
 the High Court, therefore, cannot be sustained.

G 27. For the above reasons, we accept the appeal, set  
 aside the impugned judgment of the High Court and restore  
 First Appeal No. 225 of 2002 for re-hearing and fresh decision.  
 All contentions of the parties are kept open to be agitated at  
 the time of the hearing of the first appeal. No order as to costs.

D.G.

Appeal disposed of.

H 7. (2007) 4 SCC 163.