

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : NEGOTIABLE INSTRUMENTS ACT

Reserved on: 30th April, 2014

Date of Decision: 21st July, 2014

CRL.M.C. 2687/2013

CCS INFOTECH LTD & ORS Petitioners
Through: Mr.C. Rajaram & Mr.B. Anand, Advs.

Versus

STATE & ANR Respondents
Through: Mr.Karan Singh, APP for the State.
Mr. A.B. Pandey & Mr. Devinder Singh, Advs. for R-2.

CORAM:
HON'BLE MR. JUSTICE VED PRAKASH VAISH

JUDGMENT

1. By way of this petition, the petitioners seeks quashing of order dated 14.08.2012 passed by learned Metropolitan Magistrate, Dwarka Courts, New Delhi in complaint case No.225/1/12 titled as 'M/s IRIS Computers Ltd. vs. M/s. CCS Infotech Ltd. & Ors.' whereby the petitioners were summoned for the offence under Section 138 of the Negotiable Instruments Act.

2. In short, the case of the petitioners is that respondent No.2/complainant filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') on the allegations, inter alia, that the complainant is involved in the business of computers and peripherals, having its branch office at A-155, Road No.4, Mahipalpur Extension, New Delhi-110057. The accused Nos.2 to 6 in the complaint are the directors of accused No.1 company (petitioner No.1 herein). The petitioner No.1, acting through other accused, has acted as a retail dealer of the products distributed by respondent No.2. In the normal course of business, the accused had ordered for goods which were partly supplied by the complainant vide invoices No. N201-22-1005-046 dated 31st May, 2010; N101-22-1005-105 dated 27th May, 2010 and N101-22-1005-149 dated 31st May, 2010 aggregating a sale of Rs.22,64,179/-. The petitioner No.1 had issued cheque bearing No.168642 dated 18.01.2012 of Rs.21,41,429/- drawn on Tamilnad Merchantile Bank, Chennai, which got dishonored on presentation with the remarks 'insufficient funds'. The information about the said dishonored cheque was given to respondent

No.2/complainant on 25.01.2012 from its bankers i.e. Citi Bank, New Delhi. Therefore the respondent No.2 issued legal notice of demand dated 21.02.2012 by registered AD post. Despite service of notice, the accused persons failed to make payment of amount of the cheque and therefore, complaint was filed by the respondent no. 2.

3. During the course of arguments, learned counsel for both the parties confine their arguments only on the ground that notice of demand was not issued by the complainant within 30 days of the knowledge of dishonor of the cheque.

4. Learned counsel for the petitioners contended that respondent No.2 has failed to issue legal notice within thirty days of receipt of information from the bank regarding the return of cheque as per Section 138 (b) of NI Act. It was further contended that learned trial Court could not appreciate that no cause of action ever accrued in favour of respondent No.2 and against the petitioner No.1 company. The invoices were raised by respondent No.2 at Chennai. Earlier payments were made at Chennai and goods were supplied at Chennai, as such, the Courts at Delhi have no territorial jurisdiction to entertain and try the present complaint. Further, the payee of the cheque have no option but to present the cheque for encashment to drawer's bank.

5. Learned counsel for the petitioners relied upon judgment in Sivakumar vs. Natarajan, (2009) 13 SCC 623, wherein it was held that the period of limitation has to be reckoned from the date on which the intimation of dishonor of cheque or instrument was received.

6. Per contra, learned counsel for the respondent No.2/complainant urged that there was no delay in issuance of demand notice. The information of dishonor of cheque was received by the complainant on 25.01.2012 and demand notice dated 21.02.2012 was issued on 24.02.2012, excluding the day of receipt of information from the bank. As such the demand notice clearly falls within a period of thirty days as required by Section 138 (b) of the NI Act.

7. It was further submitted by counsel for the respondent No.2 that the Courts in New Delhi have the territorial jurisdiction to try the complaint as the cheque was presented at Delhi and also, demand notice was issued from Delhi. Hence, as per Section 138 of NI Act which has various cause of action and if any cause of action arises at particular place, that place have jurisdiction to try a complaint.

8. I have given my anxious thought to the submissions made by learned counsel for both the parties and also perused the material on record.

9. At this juncture, it is relevant to reproduce Section 138 of the NI Act:-

“138. Dishonour of cheque for insufficiency, etc. of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either

because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless—

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, “debt or other liability” means a legally enforceable debt or other liability.”

10. Section 12(1) and (2) of the Limitation Act, 1963 reads as under:

“12.Exclusion of time in legal proceedings.-(1) In computing the period of limitation prescribed for any suit, appeal or application, the day from which such period is to be reckoned shall be excluded.

(2) In computing the period of limitation prescribed for an appeal or an application for leave to appeal or for revision or for review of a judgment, the day on which the judgment complained of was pronounced and the time requisite for obtaining a copy of the decree, sentence or order appealed from or sought to be revised or reviewed shall be excluded.”

11. Section 9 of the General Clauses Act, 1897 reads as matter:

“9. Commencement and termination of time. —

(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word “from”, and, for the purpose of including the last in a series of days or any other period of time, to use the word “to”.

(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887.”

12. It is a well settled law that serving of demand notice within a period of thirty days of the receipt of intimation regarding dishonour of the cheque by the payee and failure to make payment within 15 days of receipt of notice issued under Section 138(b) of the NI Act by the drawer are to precede the filing of complaint under this Section. In the matter of condoning delay in issuing demand notice beyond the statutory

period of 15 days neither Section 473 Cr.P.C. nor Section 5 of the Limitation Act, 1963 would apply nor such a delay can be legally condoned that is something beyond the powers of the Court.

13. A perusal of the clause (b) to the proviso to Section 138 of the NI Act clearly states that nothing in that Section would apply unless the payee or the holder in due course makes a demand for payment by demand notice within thirty days of the receipt of information.

14. The question as to whether the date on which the intimation of dishonor of cheque or the instrument was received has to be included or not is no more res-integra in view of the law laid by the Bench of three Judges in the case of Econ Antri Ltd. V. Rom Industries Ltd. & Anr, AIR 2013 Supreme Court 3283. The Hon'ble Supreme Court after considering the relevant provisions of Section 138 of the NI Act, Limitation Act and Section 9 of the General Clauses Act observed as under :

“17. It was submitted that in Saketh this Court has erroneously placed reliance on Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) states that in computing the period of limitation for any suit, appeal or application, the day from which such period is to be reckoned, shall be excluded. In Section 12(2) the same principle is extended to computing period of limitation for an application for leave to appeal or for revision or for review of a judgment. Our attention was drawn to Subodh S. Salaskar (AIR 2008 SC 3086 : 2008 AIR SCW 5176) wherein this Court has held that the Limitation Act, 1963 is not applicable to the N I Act. It is true that in Subodh S. Salaskar, this Court has held that the Limitation Act, 1963 is not applicable to the N.I. Act. However even if the Limitation Act, 1963 is held not applicable to the N.I. Act, the conclusion reached in Saketh could still be reached with the aid of Section 9 of the General Clauses Act, 1897. Section 9 of the General Clauses Act, 1897 states that in any Central Act or Regulation made after the commencement of the General Clauses Act, 1897, it shall be sufficient to use the word ‘from’ for the purpose of excluding the first in a series of days or any other period of time and to use the word ‘to’ for the purpose of including the last in a series of days or any other period of time. Sub-Section (2) of Section 9 of the General Clauses Act, 1897 states that this Section applies to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887. This Section would, therefore, be applicable to the N.I. Act.

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20. As the Limitation Act is held to be not applicable to N.I. Act, drawing parallel from Tarun Prasad Chatterjee where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words ‘from’ and ‘of’ in Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words.

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25. Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the N.I. Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.”

15. In the instant case, the intimation of dishonour of the cheque was received on 25.01.2012 and the demand notice was issued on 24.02.2012. Applying the law laid down in Econ Antri Ltd. (Supra), the demand notice issued on 24.2.2012 is within the stipulated period.

16. From the upshot of the aforesaid discussion, the petition deserves to be dismissed and the same is hereby dismissed.

17. The Trial Court record be sent back forthwith.

Sd./-
(VED PRAKASH VAISH)
JUDGE

July 21st 2014