

IN THE HIGH COURT OF DELHI AT NEW DELHI

Crl. M.C No. 6160-61/2005

Date of Decision: 30th May 2008

Maharaji Educational Trust & Anr. ... Petitioners

Through: Mr. Madan Bhatia Sr. Advocate with Mr.
Nageshwar Pandey, Advocate

Versus

Housing & Urban Dev.Corp.Ltd. ... Respondent

Through: Mr. A.K. Singh, Advocate

AND

Crl. M.C No. 6887-88/2006

Maharaji Educational Trust & Anr. ... Petitioners

Through: Mr. Madan Bhatia Sr. Advocate with Mr.
Nageshwar Pandey, Advocate

Versus

Housing & Urban Dev.Corp.Ltd. ... Respondent

Through: Mr. A.K. Singh, Advocate

CORAM:

HON'BLE MR. JUSTICE S.L. BHAYANA

1. Whether reporters of local paper may be allowed to see the judgment? Yes
2. To be referred to the reporter or not? Yes
3. Whether the judgment should be referred in the Digest? Yes

S. L. BHAYANA, J.

1. These petitions are filed under section 482 Cr.P.C. for quashing the order dated 15.9.2006 passed by the Court of Shri V.K.Gautam, Metropolitan Magistrate, New Delhi in the case titled as "Housing & Urban Development Corporation Limited Vs. Maharaji Educational Trust" in CC No. 55/1 (Old CC No. 3703/2002) filed under section 138 of Negotiable Instruments Act and for quashing the proceedings pending before the learned trial Court.

2. The brief facts of the case are that the petitioner No.1 is a charitable educational trust and the petitioner No.2 is the Chairman & Managing trustee of the said trust. Shri D. Balram is the authorized representative of petitioner No.1 duly authorized by the Chairman and the Managing Trustee of the petitioner No.1. The petitioner No.1 is running medical and dental colleges at Ghaziabad and Chennai. The respondent had filed a complaint case under section 138 of Negotiable Instruments Act and the petitioners were summoned by the trial Court vide order dated 15.2.2003. The petitioners moved an application for setting aside the summoning order but the prayer was declined by learned Metropolitan Magistrate vide order dated 17.11.2004. The counsel for the petitioners submitted that no notice of demand has been served upon the petitioners by the respondent/ complainant which is

mandatory under section 138 Negotiable Instruments Act. It is submitted that the A.D. Cards against which the notices were delivered to the petitioners bears the stamp of Santosh Para Medical College and there is no stamp of the petitioners on the A.D. Cards which have been placed on record by the respondent. Hence, the notices have not been properly served upon the petitioners. It is further submitted that the affidavit filed by the respondent is defective and in the said affidavit the following is mentioned:-

..." The said notice dated 18.10.2001 are not served upon the respondents..."

He has submitted that the summoning order passed by the M.M. is bad in law and is liable to be set aside.

3. On the other hand learned counsel for the respondent submits that the respondent is a Government of India Undertaking, registered under the provisions of the Companies Act 1956. The petitioners had approached the respondent/complainant for the grant of loan of Rs. 75.07 Crores for acquisition of land/ development for Santosh Medical College at No.1 Santosh Nagar, Pratap Vihar, Ghaziabad, U.P. In response to the aforesaid application the complainant corporation sanctioned a loan of Rs. 7507.00 lakhs i.e Rs. 75.07 crores. A loan agreement was executed on 20.12.1995 between the complainant

corporation and the petitioner No.2, Dr. P. Mahalingam, who signed the loan agreement on behalf of the petitioner No.1, the trust. The loan amount was agreed to be repaid in terms of the loan agreement as well as, as per the loan repayment programme annexed to the loan agreement. However, later on the re-schedulement, the repayment period of the loan agreement dated 20.12.1995 was amended increasing the repayment period. The petitioners have repaid the interest and principal due till December, 1999. Thereafter, they could not repay the amount due up till March 2000 and on the request of the petitioners vide letter dated 13.3.2000 the respondent corporation further amended the loan agreement dated 20.12.1995. Thus the principal amount as due and payable by the petitioners worked out to Rs. 96,01,01,891/- on 31.3.2000. That on 31.8.2001 the petitioners issued a post dated cheque for Rs. 11.90 crores bearing cheque No. 815951 dated 30.09.2001 of Punjab National Bank, G.T. Road, Ghaziabad, U.P. This cheque was substituted by the petitioners by hand on 6.9.2001 and another cheque bearing No. 315990 dated 25.9.2001 for Rs. 11.90 crores of Punjab National Bank, G.T. Road, Ghaziabad, U.P. was handed over to the respondents in lieu of the said earlier cheque dated 30.9.2001 discharging part liability of the loan amount and the interest accrued up to 30.6.2001. The petitioners vide their letter dated 24.9.2001

requested the complainant not to present the said cheque dated 25.9.2001 for Rs. 11.90 Crores as they would remit the payment by way of demand draft on or before 30.9.2001. The complainant accepted the request of the petitioners and did not deposit the said cheque dated 25.9.2001 for encashment. However, the petitioners did not fulfill their promise to pay by way of demand draft or otherwise on or before 30.9.2001. The respondent waited up to 3.10.2001 for receipt of said cheque amount of Rs. 11.90 crores from the petitioners. But the said demand draft was not given by the petitioners to the respondent. Ultimately on 4.10.2001 the respondent corporation deposited the said cheque with its Bankers, HDFC Bank, K.G. Marg, Connaught Place, New Delhi for payment, which was dishonoured by the Bankers of the petitioners carrying the remarks "Insufficient Funds". The respondent corporation on 18.10.2001 sent a notice to the petitioners through registered A.D. Cover postal receipt No. 5077 to 5080 intimating them regarding the bouncing of cheque dated 25.9.2001 and calling upon them to make payment due against the bounced cheque within 15 days of the receipt of the notice. It is pointed out that petitioners neither replied to the said notices nor made the payment due on the bounced cheque dated 25.9.2001 within the stipulated period of 15 days from the date of receipt of notice dated 18.10.2001 by 3.11.2001. The respondent

corporation filed the present complaint under section 138 of the Negotiable Instruments Act.

4. Learned counsel for the respondent corporation submitted that on the assurance given by the petitioners that they would make the payment of the cheque amount by a demand draft on or before 30.9.2001, the respondent did not deposit the cheque in dispute till 30.9.2001 and, waited up to 3.10.2001 for the demand draft which had been assured to the respondent corporation by the petitioners. But the petitioners' malafide intention not to make the payment of Rs. 11.90 crores by way of demand draft, compelled the respondent corporation to present the cheque on 4.10.2001 with their Bankers and the said cheque was received back with the remarks "Insufficient Fund" which further shows the malafide intention of the petitioner. It is further submitted that notice of demand dated 18.10.2001 was duly served on the petitioners at the registered office at No.1, Santosh Nagar, Pratap Vihar, Ghaziabad, U.P. But despite service of notice by Registered A.D. post, the petitioners failed to make payment of the said amount. The respondent was compelled to file a complainant case under section 138 Negotiable Instruments Act and the trial Court has rightly summoned the petitioners. It is further submitted that there was a typographical mistake in the affidavit submitted by Shri S.K. Solanki, Sr. Law Officer,

of the respondent corporation wherein it is stated that, "*the said notices are not served upon the respondents A.D. Cards duly signed are enclosed herein*". Later on by order dated 15.9.2006 the learned Metropolitan Magistrate allowed the application of the respondent corporation and directed the respondent corporation to file a fresh affidavit by deleting the word "not" and substituting it with the word "got".

5. I have heard the learned counsel for the parties and perused the original demand notice dated 18.10.2001 and I have also seen original AD receipts and postal receipts. The A.D receipts bear the stamp of Santosh Para Medical College. There is no doubt that the notices were sent at the correct address of the petitioners at Maharaji Educational Trust at No.1, Santosh Nagar, Pratap Vihar, Ghaziabad, U.P. but mischievously the petitioners have put a wrong stamp on the A.D receipt which further shows the malafide intention of the petitioners, by putting a wrong stamp although the notices were sent at the correct address. I hold that notice dated 18.10.2001 has been duly served upon the petitioners and despite the service of the demand notice on the petitioners they have failed to make the payment of the cheque amount. The counsel for the petitioners has relied upon the following citations:-
R.T. Paper Board Ltd. & Ors. (M/s) Vs. Central Excise- 2007 (3) AD Delhi

606; Mubarak Nisha Vs. R.M. Subramanian- 1997 (1) Crimes 55;
Electronic Trade & Technology Development Corpn. Ltd. Vs. Indian
Technologists & Engineers (Electronics) (P) Ltd- 1996 SCC (Crl.) 454,

which are not applicable to the facts of the present case.

6. In view of the above discussions I hold that the present petitions are without merit and the same are dismissed with costs of Rs. 25,000/-. Parties are directed to appear before the learned trial Court on 8.7.2008. LCR be sent back so that learned trial Court can proceed with the matter. Learned trial Court is directed to dispose of the case within a period of six months from today.

The petitions stand disposed of.

S.L. BHAYANA, J.

May 30th 2008

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