

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Reserved on: 21st October, 2009*
Judgment Delivered on: 26th October, 2009

+ **CRL.M.C.1869/2007 & Crl.M.A.Nos.6479/2007**
& 12998/2007

PRAJAN KUMAR JAIN Petitioner
Through: Mr.R.P.Sharma and
Mr.Amit Punj, Advocates.

Versus

RAVI MALHOTRA Respondent
Through: Mr.M.L.Mahajan and
Mr.Gaurav Mahajan,
Advocates.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not? Yes
3. Whether the judgment should be reported in the Digest? Yes

INDERMEET KAUR, J.

1. This petition seeks quashing of the complaint No.1535/1 titled as Sh.Ravi Malhotra vs. Sh.Prajan Kumar Jain filed under Sections 138/142 of the Negotiable Instruments Act (hereinafter referred to as NI Act) read with Section 420 of the Indian Penal Code. Complainant is Ravi Malhotra. Prajan Kumar Jain has been arrayed as the accused.

2. The short point raised in this petition is that the two cheques i.e. cheque no.7375535 dated 25.3.2005 for Rs.5 lakhs and cheque no.7375536 dated 30.4.2005 for Rs.5 lakhs do not come within the ambit of a 'legally enforceable debt'. The said cheques had been issued for the discharge of a liability arising out of an agreement dated 14.6.2000; and having been issued on 25.3.2005 and 30.4.2005 were for the discharge of debt which had become time barred. The complaint is thus liable to be quashed.

3. To appreciate this submission salient paragraphs of the complaint filed by Ravi Malhotra are reproduced.:

"2. That by an agreement dated 14.06.2000, entered into by the complainant with the accused and his brother, Shri Vijay Kumar Jain, to purchase the agricultural land measuring 12 Bighas and 03 Biswas, bearing Mustatil No.54, Killa No.14/2 (3-12), 17 (2-19), 7 (4-17), 14/1 (0-15), situated at village Bharthal, Tehsil Vasant Vihar, New Delhi, for the consideration of rupees 2 Crores 30 Lakhs. The complainant paid a sum of rupees 30 Lakhs to the accused and his brother Shri Vijay Kumar Jain, who were jointly maintained as Party No.1 in the said agreement.

3. That after sometimes the parties agreed to terminate the agreement and the accused alongwith his brother, Shri Vijay Kumar Jain, promised to return the advance money of rupees 30 Lakhs paid by the complainant to the accused and his brother. This settlement took place on 26.01.2005, whereby the accused and his brother acknowledged to pay the

balance amount in short time and the agreement was terminated.

4. That in the discharge of his liability of debt arising out of the agreement dated 14.6.2000 between the accused and his brother, Shri Vijay Kumar Jain on the one hand and the complainant on the other, the accused agreed to pay a sum of Rs.10,00,000/- (Rupees ten lakhs) and in lieu thereof the accused issued two post dated cheques drawn on the Jammu & Kashmir Bank Ltd., Sector-3, Krishna Complex, Trikuta Nagar, Jammu in favour of the complainant. The details whereof are as under:-

1. 7375535 dated 25.3.2005 for Rs.5,00,000/-.

1. 7375536 dated 30.4.2005 for Rs.5,00,000/-."

4. Learned counsel for the petitioner has placed reliance upon a judgment reported in Vijay Polymers Pvt. Ltd. & Anr. vs. Vinnay Aggarwal 162 (2009) DLT 23 to support his submission that the cheques issued in lieu of a time barred debt does not come within the definition of a 'legally enforceable debt' as is contained in the Explanation of Section 138 of the NI Act. Cheques issued for the discharge of such a time barred debt cannot become the subject matter of a complaint under Section 138 of the NI Act; the agreement in this case having terminated on 14.6.2000 and cheques having been issued almost five years later i.e. on 25.3.2005 and 30.4.2005, there being no enlargement of period of limitation, it is clear that at this point of time the liability, if any, qua the accused had become time barred. Reliance has also been placed upon Sasseriyil Joseph vs. Devassia 2001 CrI.LJ 24 to CrI.M.C.1869/2007

support this submission. It is further submitted that the presumption which is contained in Section 139 of the NI Act only raises a presumption that the said cheque has been issued for the discharge of a debt or liability and the existence of a legally recoverable debt is not a matter of presumption under the aforestated provision of law. For this proposition reliance has been placed upon Krishna Janardhan Bhat vs. Dattatraya G. Hegde (2008) 4 SCC 54.

5. These submissions have countered by the learned counsel for the complainant. It is submitted that it is not in dispute that the parties had entered into an agreement dated 14.6.2000 which had fizzled out and they had agreed to terminate the agreement. This settlement had taken place on 26.1.2005 whereby the accused and his brother had acknowledged to pay the balance amount within a short time; thereafter the aforesaid two cheques dated 25.3.2005 and 30.4.2005 for Rs.5 lakhs each had been issued. It is submitted that this acknowledgment to pay the balance amount would constitute a fresh period of limitation and even otherwise these are disputed questions of facts and being a matter of trial, cannot become the subject matter of a quashing petition; if there is documentary evidence which might amount to an acknowledgment reviving the period of limitation such a question can only be agitated before the Magistrate by way of a defence of the respondent. Reliance has been placed upon A.V.Murthy vs.

B.S.Nagabasavanna (2002) 2 SCC 642 as also MMTC Ltd. and Anr. vs. Medical Chemicals and Pharma (P) Ltd. and Anr. IV (2001) CCR 316 (SC) to support this argument. There is also no specific requirement that the complainant must specifically allege in the complaint that there was a subsisting liability; burden of proving that there was no such existing debt or liability is on the respondents which they have to discharge at the stage of trial. It is submitted that in Woods & Ors. Vs. State & Anr. 121 (2005) DLT 314, it has been held that where there is no inherent defect in a complaint under Section 138 of the NI Act, a petition under Section 482 of the Cr.PC would not be maintainable. Reliance has also been placed upon Bishan Dayal vs. Dinesh Kumar Singal 2007 (2) DCR 161 to support the argument that the question whether a legally enforceable debt exists or not should not be pre-judged by the High Court and the invocation of powers by the High Court in such circumstances under Section 482 Cr.PC would not be justified.

6. The record has been perused and the submissions have been noted.

7. To better appreciate the contentions of the parties, the provisions of Section 138 of the Negotiable Instruments Act are reproduced hereunder:

"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).....

(b).....

(c).....

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

8. At this juncture, it would also be appropriate to take note of

Section 18 of the Limitation Act which inter alia reads as follows:

“18. Effect of acknowledgement in writing—(1) *Where, before the expiration of the prescribed period for a suit or application in respect of any property or right, an acknowledgement of liability in respect of such property or right has been made in writing signed by the party against whom such property or right is claimed, or by any person through whom he derives his title or liability, a fresh period of limitation shall be computed from the time when the acknowledgement was so signed.*
.....”

9. Perusal of the complaint shows that an agreement dated 14.6.2000 had been entered into between the complainant and the accused and his brother Vijay Kumar Jain to purchase agricultural land for a consideration of Rs.2.30 crores. A sum of Rs.30 lakhs was accordingly paid by the complainant to the accused and his brother. Complaint further recites that after

sometime the parties had agreed to terminate this agreement and the accused and his brother Vijay Kumar Jain promised to return the sum of Rs.30 lakhs paid by the complainant to him. This settlement took place on 26.1.2005 on which date the accused and his brother had acknowledged to pay the balance amount in a short time. Further part of the complaint states that in discharge of this liability of the debt arising out of the agreement dated 14.6.2000 the accused agreed to pay a sum of Rs.10 lakhs vide two post-dated cheques dated 25.3.2005 and 30.4.2005 of Rs.5 lakhs each.

10. The facts as detailed in the complaint show that the agreement between the parties was dated 14.6.2000. Pursuant to this agreement, the complainant had paid Rs.30 lakhs to the accused which the accused had agreed to repay as the agreement had terminated. On 26.1.2005 i.e. four and half years after the termination of this agreement, the accused and his brother acknowledged to pay the balance amount in a short time. This acknowledgment even as per the complaint was much after the statutory period of three years which is the prescribed period of limitation for the recovery of an outstanding amount. An acknowledgment to be encompassed within the ambit of Section 18 of the Limitation Act has to be an acknowledgment in writing as also within the prescribed period of limitation. These are the twin requirements which have to be fulfilled in order to be a valid

acknowledgment under Section 18 of the Limitation Act which is admittedly not so in the instant case. In this case this acknowledgment to pay the balance amount was in terms of the settlement dated 26.1.2005 i.e. much after the statutory period of three years; it also does not speak of the acknowledgement being in writing. It was thus not a valid acknowledgment. Cheques issued on 25.3.2005 and 30.4.2005 were clearly outside the period of limitation.

11. In Vijay Polymers Pvt. Ltd. & Anr.(supra), relying upon the judgment of Hon'ble Supreme Court in Sasseriyl Joseph (supra) a coordinate bench of this court had held that cheques issued on a time barred debt would not fall within the definition of 'legally enforceable debt' which is the essential requirement for a complaint under Section 138 of NI Act; the extended meaning of debt or liability has been explained in the Explanation to the Section which means a legally enforceable debt or liability. The existence of a legally recoverable debt is also not a matter of presumption as has been held by the Supreme Court in Krishna Janardhan Bhat (supra).

12. The judgments relied upon by the learned defence counsel are distinct on their facts. In the case of A.V.Murthy (supra), the hon'ble Supreme Court had held that the question of an acknowledgment reviving the period of limitation could be agitated before the Magistrate, in a case where there was

documentary evidence; in the said case the balance sheet of the respondent had acknowledged his liability; there is no such documentary evidence in this case.

13. The judgments of MMTC Ltd.& Anr. (supra) as also the subsequent judgments of Woods & Ors. (supra) and Bishan Daya (supra) do not relate to the issue as to whether the transaction had become time barred or not; the facts of the said cases would be inapplicable.

14. In the instant case, the two cheques which are the subject matter of this complaint were for the discharge of a liability of a debt arising out of the agreement dated 14.6.2000 which debt had become time barred. This debt was not a legally enforceable debt within the meaning of Section 138 Explanation of the NI Act. Complaint and all proceedings emanating therefrom are accordingly quashed.

(INDERMEET KAUR)
JUDGE

26th October, 2009
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