

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CRL.MC. No.3628/2003**

Decided on 17.09.2010

IN THE MATTER OF :

ASHOK BISWAL

..... Petitioner

Through: Mr.Vishal Sehijpal, Advocate

versus

MOHD. JAFFAR

..... Respondent

Through: None

CORAM

*** HON'BLE MS.JUSTICE HIMA KOHLI**

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

HIMA KOHLI, J. (Oral)

1. Challenge has been laid in the present petition to the maintainability of the complaint filed by the respondent against the petitioner under Section 138 of the Negotiable Instruments Act on the ground that the same is barred by limitation.

2. In a nutshell, the facts of the case as set out in the complaint filed by the respondent, are that the respondent advanced a friendly loan to the petitioner to the tune of Rs.4,00,000/- and the petitioner issued the

following post dated cheques for the refund of the loan amount:

S.No.	Cheque No.	Dated	Amount	Drawn on
1.	300255	15.1.96	Rs.1,00,000/-	Punjab National Bank Kalkaji, N.Delhi
2.	300257	1.2.96	Rs.1,00,000/-	-do-
3.	300258	1.2.96	Rs. 50,000/-	-do-
4.	233323	25.2.96	Rs. 50,000/-	-do-
5.	300256	14.5.96	Rs. 50,000/-	-do-

3. On presentation of the three cheques mentioned at S.Nos. 1 to 3, as noted above, by the respondent/complainant with his bankers for encashment, the same were returned back on 7.3.1996 with the remarks, "insufficient funds". It is averred in the complaint that on the assurance of the petitioner, when the respondent/complainant presented the fourth cheque mentioned at S.No.4 above, the same got dishonoured by the bankers of the petitioner on 2.5.1996, with the same remarks, "insufficient funds".

4. It is further averred that the respondent/complainant again presented the aforesaid cheques for encashment, but the same were returned back on 8.5.1996 and 9.5.1996 on account of 'insufficient funds'. The cheque at item No.5 was presented once again for encashment, but returned back on 16.5.1996 with the remarks, "insufficient funds".

5. On receipt of the bounced cheques on 16.5.1996, the respondent/complainant served a statutory legal notice dated 20.5.1996 (Annexure A) by registered post as well as UPC. It is averred in the complaint that the notice sent by the registered post was avoided, but the notice issued under postal certificate was deemed to have been served upon the petitioner, as it was not returned back. It is also averred that

even after service of the notice on the petitioner and the respondent/complainant contacting the petitioner for making the payments of the aforesaid amounts in lieu of the dishonoured cheques, the petitioner failed to do the needful, though he kept giving assurances to the respondent/complainant that the cheques shall be honoured if they were re-presented. The respondent/complainant thereafter re-presented all the cheques on 6.7.1996, but the same were again returned back with the remarks, "account was closed".

6. The respondent/complainant once again issued a legal notice dated 19.7.1996 to the petitioner, despatched by registered post as also UPC and finally filed a complaint in the Court of the learned MM, on 16.8.1996.

7. After the filing of the complaint, the trial court issued summons to the petitioner. In the meantime, the respondent/complainant expired on 29.4.1997 and his legal heirs filed an application for bringing them on record on 25.7.1997. The said application was finally allowed vide order dated 10.4.2003 and the wife of the deceased respondent was permitted to be brought on record as his legal heir.

8. In September 2003, the petitioner preferred the present petition praying *inter alia* for setting aside the order dated 10.4.2003, permitting the legal heirs of the deceased respondent to be brought on record. It was also prayed that the complaint itself is liable to be rejected, as it was lodged beyond the prescribed period of limitation.

9. At the outset, counsel for the petitioner states that he confines his relief in the present petition to prayer (b) alone and does not press prayer (a). He states that the proceedings pending before the learned MM

ought to be quashed in view of the law laid down by the Supreme Court in the case of Sadanandan Bhadran Vs. Madhavan Sunil Kumar reported as **(1998) 6 SCC 514**. He points out that in view of the aforesaid decision, while the complainant is free to present the cheques repeatedly within their validated period, but once a demand notice had been got issued by him on 20.5.1996 and payments were not received within a period of 15 days from the date of receipt of the notice, the complainant had to avail of the very same cause of action and file the complaint within a period of one month from the day immediately following the day when the period of fifteen days from the date of receipt of the first notice by the petitioner expired, which was not done in the present case. It is therefore stated that the complaint is well outside the period of limitation and the learned MM erred in taking cognizance on the basis of the second demand notice, whereas, the cause of action had arisen under the first notice dated 20.05.1996.

10. It is no longer *res integra* that cause of action to file a complaint on non-payment of cheque, despite issue of the notice, arises but once. Clause (a) of the proviso to Section 138 of N.I. Act does not place an embargo upon the payee to successively present a dishonoured cheque during the period of its validity. However, on each presentation of the cheque and its dishonour, a fresh right, and not 'cause of action', accrues in his favour. But once a notice has been issued and payment is not received within 15 days of the receipt of the notice, the payee has to avail the very cause of action arising thereupon and the complaint under Section 142 (b) has to be filed within one month from the day immediately following the day on which the period of 15 days from the date of receipt of the first notice by the drawer expires.

11. While discussing the aforesaid provisions, the Supreme Court has observed in Sadanandan Bhadran(supra) as below:

“11. Now, the question is how the apparently conflicting provisions of the Act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour, and that too within one month from the date the cause of action arises, can be reconciled. Having given our anxious consideration to this question, we are of the opinion that the above two provisions can be harmonised, with the interpretation that on each presentation of the cheque and its dishonour a fresh right - and not cause of action - accrues in his favour. He may, therefore, without taking preemptory action in exercise of his such right under Clause (b) of Section 138, go on presenting the cheque so as to enable him to exercise such right at any point of time during the validity of the cheque. **But, once he gives a notice under Clause (b) of Section 138 he forfeits such right for in case of failure of the drawer to pay the money within the stipulated time he would be liable for the offence and the cause of action for filing the complaint will arise. Needless to say, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen days from the date of the receipt of the notice by the drawer, expires.**”(emphasis added)

12. From a plain reading of the Section 138, it is clear that a Court can take cognizance of a written complaint of an offence under Section 138 if it is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138. In this context, the Supreme Court in the above mentioned case has also observed:

“6. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908) “cause of action” means every fact which it is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved successfully to prosecute the drawer for an offence under Section 138 of the Act:

- (a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonoured.

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

If we were to proceed on the basis of the generic meaning of the term 'cause of action' certainly each of the above facts would constitute a part of the cause of action but then it is significant to note that Clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and that is the failure to make the payment within 15 days from the date of the receipt of the notice. The reason behind giving such a restrictive meaning is not far to seek. **Consequent upon the failure of the drawer to pay the money within the period of 15 days as envisaged under Clause (c) of the proviso to Section 138, the liability of the drawer for being prosecuted for the offence he has committed arises, and the period of one month for filing the complaint Under Section 142 is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for doubt that cause of action within the meaning of Section 142(b) arises - and can arise - only once".***(emphasis added)*

13. The aforesaid legal position has been reiterated by the Supreme Court in the following recent cases:

(i) Prem Chand Vijay Kumar Vs. Yashpal Singh & Another **(2005)4 SCC 417.**

(ii) S.L.Constructions & Anr. Vs. Alapati Srinivasa Rao & Anr.**(2009) 1 SCC 500**

(iii) Tameeshwar Vaishnav Vs. Ramvishal Gupta **2010(1) LRC86(SC)**

(iv) Gujral Tours & Travels P.Ltd. Vs. Anup Gulati **2010(1) LRC 70(Del)**

14. In the present case, as per the documents placed on the record, on dishonour of the cheques in question, a legal notice was dispatched to the petitioner by the respondent/complainant on 20.5.1996. As it is averred in the complaint that the petitioner avoided service by registered post, but the postal certificate was deemed to have been served on him, after excluding a period of three days from 20.5.1996 as a reasonable time taken for receiving the notice, the period of 15 days to enable the petitioner to make the payment, can be reckoned to start from 24.5.1996 and would have ended on 8.6.1996. The period of thirty days, as available with the respondent/complainant for filing the complaint, would commence on 9.6.1996 and after excluding the one day of 8.6.1996, expire on 8.7.1996 whereas in the present case, the complaint came to be filed only on 16.8.1996, i.e., after over 60 days, if reckoned from 9.6.1996.

15. As already discussed above, once a demand notice is sent and no payment is made by the drawer within 15 days of the receipt thereof, it is not permissible for the respondent/complainant to create another cause of action by re-presentation of the same cheques, time and again. In the instant case, during the validity of the cheques, the respondent/complainant could have presented the cheques any number of times, however, the right of filing a complaint under Section 142 of the Act stood forfeited upon service of the legal notice dated 20.05.1996 on the petitioner. The respondent/complainant ought to have lodged his complaint u/s 138 of the Act within a period of one month, when he did not receive the payment from the petitioner within 15 days after receipt of the legal notice. As noted above, cause of action within the meaning of Section 142

(b) arises only once and that cause of action arose on 08.06.1996, when the period of fifteen days time available to the respondent/complainant to get the payment of the amount of the cheque started to run. A fresh service of the demand notice on the petitioner, on a subsequent date could not give rise to a fresh cause of action to the respondent, as far as the criminal liability under Section 138 of Negotiable Instruments Act is concerned.

16. In these circumstances, it has to be held that the complaint filed by the respondent/complainant is barred by limitation and is liable to be quashed. The present petition is allowed. The complaint bearing No.391/96 filed by the respondent/complainant under Section 138 of the Negotiable Instruments Act, entitled "Mohd.Jaffar Vs. Ashok Biswal", pending in the court of the learned MM, Tis Hazari Courts, Delhi is quashed.

17. A copy of this order be forwarded by the Registry directly to the concerned MM, for perusal.

SEPTEMBER 17, 2010
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(HIMA KOHLI)
JUDGE