

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **Crl.A. No.1308/2010**

Decided on 08.11.2010

IN THE MATTER OF :
ESCORTS LTD.

..... Appellant

Through: Ms. Shweta Singh, Advocate

versus

RAMA MUKHERJEE

..... Respondent

Through: Mr. A.K.De, Advocate

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

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

HIMA KOHLI, J. (Oral)

1. The present appeal is filed by the appellant under Section 378 read with Section 482 Cr.P.C. praying *inter alia* for setting aside the order dated 29.1.2010 passed by the learned MM, Karkardooma Court dismissing for non-prosecution, the Criminal Complaint No.1459/2006 filed by the appellant/complainant against the respondent/accused under Section 138 of the Negotiable Instruments Act (for short '**the Act**').

2. The submission of the counsel for the appellant is that the appellant/complainant filed a Complaint under Section 138 of the Act against the respondent/accused, alleging dishonour of a cheque dated 25.2.2004,

for a sum of ₹15,00,000/- issued by the respondent/accused in favour of the appellant/complainant. As per the copy of the order sheet placed on the record, vide order dated 26.6.2004, the learned Metropolitan Magistrate summoned the respondent/accused for 28.8.2004. However, despite orders passed thereafter by the learned Metropolitan Magistrate on different dates, directing issuance of process for summoning the respondent/accused, process fee was not filed by the appellant/complainant. Vide order dated 24.4.2009, costs of ₹100/- were imposed on the appellant/complainant while directing process to be issued to the respondent/accused, in terms of the earlier orders, returnable for 17.9.2009. On 17.9.2009, the summons sent to the respondent/accused were received back unserved, hence fresh service was directed for 2.12.2009. On 2.12.2009, as steps were not taken by the appellant/complainant to serve the respondent/accused, further opportunity was granted to the appellant/complainant to serve the respondent/accused, returnable on 29.1.2010, subject to payment of additional costs of ₹500/-. On 29.1.2010, the learned Metropolitan Magistrate noted that the appellant/complainant had neither deposited the costs with the Legal Aid, nor taken any steps to serve the respondent/accused. As a result, the complaint was dismissed for non-prosecution.

3. Counsel for the appellant/complainant states at the outset, that the costs imposed vide order dated 2.12.2009 were deposited in the Legal Aid after passing of the impugned order dated 29.1.2010. She states that steps could not be taken by the appellant/complainant to serve the respondent/accused after 17.9.2009, for the reason that the Authorized

Representative of the appellant/complainant left its services in November 2009. Another employee was engaged in his place and he was appointed as Authorized Representative of the appellant on 4.1.2010 and thereafter power of attorney was executed in his favour appointing him as the Authorized Representative of the appellant/complainant, to appear on its behalf in the present complaint.

4. It is submitted that immediately after the new Authorized Representative joined the Company, he dispatched an email dated 15.1.2010 to the counsel on the record, requesting him to give the status of the present case and two other cases. She draws the attention of this Court to the emails exchanged between the Authorized Representative of the appellant/complainant and the previous counsel, enclosed with the petition as Annexure-3(colly.). It is further stated that after exchange of emails with the counsel on the subject, the Authorized Representative found that the status of the case of the appellant/complainant was not available in the office of the earlier counsel as the respondent/accused was described in the correspondence by the name of the firm, i.e., M/s Girinder Sunander & Company, and not by the name of the respondent/accused. In this regard, she refers to the email dated 6.2.2010 issued by the Authorized Representative of the appellant/complainant to the erstwhile counsel. It is stated that immediately after receiving a clarification from the previous counsel, a certified copy of the complaint and the impugned order was applied for on 16.2.2010, the certified copy was ready on 25.2.2010 and was collected by the appellant/complainant on 5.3.2010. Thereafter, the

present petition was filed on 22.3.2010, explaining the reasons for non-filing of the process fee for effecting service on the respondent/accused. Counsel for the appellant therefore seeks setting aside of the dismissal order dated 29.1.2010 and restoration of the complaint to its original position.

5. This Court has heard the counsel for the appellant and perused the documents placed on the record. A perusal of the order sheet in the present case, shows that the appellant/complainant has been rather lackadaisical in pursuing its complaint. Even prior to 17.9.2009, there have been occasions when process fee was not filed by the appellant, resulting in delaying the proceedings. Nominal costs were also imposed on the appellant/complainant on two occasions vide orders dated 24.4.2009 and 2.12.2009.

6. Having regard to the explanation offered by the counsel for the appellant, for non-filing of process fee and for non-deposit of costs, in terms of the order dated 2.12.2009, this Court is of the opinion that just and sufficient cause has been shown by the appellant/complainant for setting aside the order dated 29.1.2010, by which the complaint was dismissed for non-prosecution, but subject to costs.

7. Accordingly, the present petition is allowed and the order dated 29.1.2010 is set aside, subject to payment of costs of ₹15,000/- to be deposited by the appellant, with the Delhi High Court Legal Services Committee within two weeks. Proof of deposit of costs shall be produced

before the learned MM on the next date of hearing.

8. List before the MM on 20.12.2010 at 2.30PM for appropriate orders. As the respondent/accused is duly represented through counsel in the present proceedings, she is directed to appear before the learned MM on the date of hearing fixed as above.

The registry is directed to forward a copy of this order forthwith to the concerned MM for information.

NOVEMBER 8, 2010
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(HIMA KOHLI)
JUDGE