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%. 17.09.2010

Present: Mr. S. Azad, Adv. for the petitioners.
None for the respondent.

+Crl. M.A. No. 15230/2010 (exemption)

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Allowed, subject to all just exceptions.

Application stands disposed of.

Crl. M.C. No. 2996/2010 & Crl. M.A. No. 15229/2010 (stay)

1. Respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the petitioners before the Trial Court. Notice was served on the respondent. It was alleged in the complaint that respondent had purchased plastic dana from the petitioners on 7th July, 2005 and 8th July, 2005. In order to discharge their liability, they issued five cheques of ₹ 1 lac each amounting to ₹ 5 lacs. On presentation, the cheques were received back dishonored. The cheque amount was not paid despite service of demand notice. After service, petitioners appeared before the Trial Court. Notice under Section 251 Cr.P.C. was served to which they pleaded not guilty and claimed trial. Respondent examined its witnesses and closed evidence. Thereafter, statement under Section

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313 Cr.P.C. of the petitioner was recorded. Petitioners examined one Shri Arun Khanna as DW1 on 4th December, 2009. Despite several opportunities petitioners did not examine any other witness in their defence. On 22nd March, 2010, petitioners' defence evidence was closed on the statement made by petitioner No. 2 that no other witness was to be examined by them. On 19th April, 2010 final arguments were heard and case was adjourned for orders. At that stage, petitioners preferred an application under Section 311 Cr.P.C. praying therein that they be permitted to examine one more witness to prove the Lease Deed. In fact, this Lease Deed appears to have been executed by Shri Arun Khanna in favour of petitioner No. 1. Shri Arun Khanna has already been examined as DW1. That apart, this Lease Deed is insufficiently stamped and has not even been registered with the Sub Registrar. In view of this fact, Trial Court as well as the Additional Sessions Judge, who has dealt with the Revision, have come to the conclusion that application under Section 311 Cr.P.C. was devoid of merits and had been filed only to drag on the trial. I do not find the view taken by the Trial Court to be erroneous in the facts of this case. As per the respondent, cheques were issued by the petitioners in order to clear their liability to square up their dues towards supplies made by the respondent to

the petitioners. Full opportunity was granted to the petitioners to lead evidence in their defence. In fact, landlord has even been produced in the witness box. This document was very much available with the petitioners and same could have been produced earlier in the examination of DW1 Arun Khanna.

For the foregoing reasons, I am not inclined to interfere with the orders of the courts below in exercise of inherent powers of this Court under Section 482 Cr.P.C. This petition is dismissed.



A.K. PATHAK, J.

September 17, 2010
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