

IN THE HIGH COURT OF DELHI: NEW DELHI

+ CRL. M.C. No. 414/2011

% Judgment decided on: 29th March, 2011

M/s. INDRAPURAM HABITAT
CENTRE PVT. LTD. & ANR.

.....PETITIONERS

Through: Mr. P.K. Bhalla, Adv.

Versus

M/s. STUP CONSULTANTS PVT. LTD. RESPONDENT

Through: Mr. P. Roy Chaudhary, Adv.

Coram:

HON'BLE MR. JUSTICE A.K. PATHAK

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

A.K. PATHAK, J. (Oral)

1. By way of present petition under Section 482 of the Code of Criminal Procedure petitioners seek quashing of complaint case under Section 138 of the Negotiable Instruments Act, 1881 (for short hereinafter referred to as "the Act") filed by the respondent, titled as M/s. Stup Consultants Pvt. Ltd. vs. M/s. Indrapuram Habitat Centre Pvt. Ltd. & Ors., pending in the court of Metropolitan Magistrate, New Delhi.

2. It is alleged in the complaint that respondent had entered into an agreement with the petitioner No. 1 for providing project

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management and construction management consultancy services. It was agreed between the parties that petitioner shall pay a sum of ₹44.05 lacs plus service tax to the respondent towards consultancy charges at various stages, against monthly invoices raised in this regard. In discharge of their part liability, petitioners issued four post dated cheques bearing Nos. 166118 dated 25th March, 2009, 166119 dated 25th August, 2009 and 166120 dated 25th September, 2009 for ₹20,00,000/- each and cheque No. 166132 dated 25th December, 2009 amounting to ₹9,15,256/- drawn on Bank of India, New Delhi.

3. On presentation of Cheque No. 166120 dated 25th September, 2009, it was returned dishonored with the remarks “funds insufficient”. This fact was brought to the notice of petitioners. Petitioners requested the respondent to deposit the cheque again on or after 26th October, 2009. Accordingly, cheque was again presented for encashment on 26th October, 2009. However, it was again returned dishonored for the reason “exceeds arrangement” vide a cheque return memo dated 29th October, 2009. Despite service of legal notice dated 25th November, 2009, petitioners had failed to pay the cheque amount within the statutory period, thus, had committed the offence punishable under Section 138 of the Act. Petitioner No. 2 has been impleaded as an accused being Managing Director of petitioner No. 1.

4. Learned counsel for the petitioners has contended that after the cheque had been returned dishonored, respondent had issued a notice of demand under Section 138(b) of the Act on 21st October, 2009. Since the cheque amount had remained unpaid, “cause of action” had arisen in favour of the respondent for filing a complaint under Section 142(b) of the Act within one month from the 15th day of service of notice. Service of notice dated 21st October, 2009 on the petitioners gave rise to “cause of action” in favour of respondent for filing a complaint under Section 138 of the Act against the petitioners on the expiration of 15th day from the date of service of the said notice. This notice was received by the petitioners on 24th October, 2009, thus, respondent should have filed a complaint latest by 8th November, 2009, in terms of Section 142(b) of the Act. Having given the notice under Clause (b) of Section 138 of the Act, respondent had forfeited its right to re-present the cheque. Subsequent presentation of the cheque and its being returned unpaid for the reason “exceeds arrangement” vide cheque return memo dated 29th October, 2009 could not give rise to fresh “cause of action” in favour of the respondent to file a complaint under Section 142(b) of the Act. In nutshell, it is contended that the complaint has been filed beyond the period of one month from the date of “cause of action” having arisen in favour of respondent, thus, complaint was barred by time and was liable

to be quashed. Reliance has been placed on ***Sadanandan Bhadran vs. Madhavan Sunil Kumar, (1998) 6 SCC 514*** and ***Tameeshwar Vaishnav vs. Ramvishal Gupta, AIR 2010 SC 1209***.

5. Per contra, learned counsel for the respondent has contended that notice dated 21st October, 2009 was neither issued through a lawyer nor by an authorized person on behalf of the respondent, thus, was invalid. Moreover, petitioners had requested the respondent to re-present the cheque on or after 26th October, 2009. Thus, earlier notice, in any case, was inconsequential. Even on second occasion, cheque had been returned dishonored with the remarks “exceeds arrangement”. Thereafter, vide a legal demand notice dated 25th November, 2009, petitioners were called upon to pay the cheque amount within 15 days from the receipt of the notice. Notice was issued within the statutory period. Since cheque amount was not paid within 15 days from the receipt of the notice, “cause of action” had arisen in favour of the respondent to file the complaint under Section 142(b) of the Act within one month from expiry of 15th day from the receipt of legal demand notice.

6. I have considered the rival contentions of both the parties and do not find any force in the contentions of learned counsel for the respondent. Respondent had deposited the cheque in

question with its banker i.e. State Bank of Indore, New Delhi on 25th September, 2009. In turn, banker of the respondent presented the said cheque to the drawer's bank for encashment. Cheque was returned dishonored with the remarks "funds insufficient" on 26th September, 2009 vide a cheque return memo. Thereafter, on receipt of intimation that the cheque had been returned dishonored, respondent had issued a demand notice dated 21st October, 2009. Receipt of this notice has been admitted by the petitioners. According to the petitioners, this notice was received on 24th October, 2009. Relevant it would be to refer to the contents of this notice at this stage which reads as follows:-

"Dear Sir,

It is to inform you that we had deposited your cheque No. 166120 dated 25th September, 2009 at our bank, but the same has returned to us unpaid by the bank with their Return Memo Report dated 26th September, 2009 giving reason "Funds Insufficient" (Photocopy enclosed for reference).

Kindly treat this letter as our notice under Section 138(b) of the Negotiable Instruments Act, 1881. As per the NI Act, you are statutorily obliged to make payment in lieu of the aforesaid dishonoured cheque within 15 days from the date of receipt of this letter.

We sincerely hope that you shall honour your commitments to us and avoid unnecessary litigation."

7. A perusal of the contents of this notice, in no uncertain terms, indicate that the same had been issued under Section 138(b) of the Act, inasmuch as, respondent had made it

clear that in case petitioners failed to honor their commitment, same may lead to unnecessary litigation. The aforesaid notice fulfills the requirement of Section 138(b) of the Act. Respondent had specifically called upon the petitioners to pay the cheque amount within the statutory period of 15 days in order to avoid unnecessary litigation. There is no legal requirement that a notice has to be sent through an Advocate. It is open to a party either to issue a notice himself or through a lawyer. Section 138 (b) of the Act does not mandate issuance of a demand notice through a lawyer. The cheque amount was not paid within 15 days from the receipt of this notice dated 21st October, 2009. Thus, on expiry of 15th day, a “cause of action” had arisen in favour of the respondent to file the complaint under Section 142(b) of the Act.

8. At this stage, Sections 138 and 142 of the Act are quoted with advantage, which reads as under:

“138. 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 provisions of this Act, be punished with imprisonment for a term which may extend 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) The cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.

(b) The payee or the holder induce course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer, of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheques as unpaid, and

(c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

142. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;
(b) Such complaint is made within one month of the date on which the cause of action arises under clause (C) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138."

9. A conjoint reading of both the above quoted provisions, in

no uncertain terms, show that for drawee of the cheque, the

presentation of the cheque and its return by the drawer's bank for the reason "insufficient funds" may give rise to part of the "cause of action" but, "cause of action" for filing the complaint under Section 142 (b) of the Act shall arise only on non-payment of the cheque amount within the statutory period as envisaged under Section 138(c) of the Act, despite service of demand notice as provided under Section 138(b) of the Act. In other words, a cheque can be presented for encashment on more than one occasion within its period of validity but its dishonourment on each occasion would not give rise to "cause of action" for filing the complaint under Section 142 (b) of the Act unless cheque amount remains unpaid even on expiry of 15th day of service of a notice under Section 138(b) of the Act. Only after "cause of action" arises on account of the non-payment of the cheque amount within 15 days, the complaint under Section 142 (b) of the Act has to be mandatorily filed within the time limit as prescribed therein. Having issued notice under Section 138 (b), complainant loses its right to present the cheque again. If such a course is permitted it shall also make the period of limitation as prescribed under the Act for filing the complaint nugatory.

10. In ***Sadanandan Bhadran's case (supra)***, Supreme Court has held that on each presentation of the cheque and its dishonor, a fresh right and not cause of action accrues in favour of the complainant. He may, therefore, without taking

pre-emptory 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 offence and the “cause of action” for filing the complaint will arise. In paras 7 and 8 Supreme Court has held as under:

“7. Besides the language of Sections 138 and 142 which clearly postulates only one cause of action there are other formidable impediments which negates the concept of successive causes of action. One of them is that for dishonour of one cheque there can be only one offence and such offence is committed by the drawer immediately on his failure to make the payment within fifteen days of the receipt of the notice served in accordance with Clause (b) of the proviso to Section 138. That necessarily means that for similar failure after service of fresh notice on subsequent dishonour the drawer cannot be liable for any offence nor can the first offence be treated as non est so as to give the payee a right to file a complaint treating the second offence as the first one. At that stage it will not be a question of waiver of the right of the payee to prosecute the drawer but of absolution of the drawer of an offence, which stands already committed by him and which cannot be committed by him again.

8. The other impediment to the acceptance of the concept of successive causes of action is that it will make the period of limitation under Clause (c) of Section 142 otiose, for, a payee who failed to file his complaint within one month and thereby forfeited his right to prosecute the drawer, can circumvent the above limitative clause by filing a complaint on the basis of a fresh presentation of the cheque and its dishonour. Since in the interpretation of statutes the

Court always presumes that the legislature inserted every part thereof for a purpose and the legislative intention is that the every part should have effect the above conclusion cannot be drawn for, that will make the provision for limiting the period of making the complaint nugatory.”

11. Similar is the view expressed by Supreme Court in ***Tameeshwar Vaishnav's case (supra)***. It was held that a cheque may be presented several times within the period of its validity, the cause of action for a complaint under Section 138 of the Act arises but once, with the issuance of notice after dishonor of the cheque and the receipt thereof by the drawer.

12. The legal position which emerges from the above discussions is that a cheque can be presented successively upon it being dishonored on presentation, but the same by itself would not give rise to “cause of action” for filing the complaint. “Cause of action” for filing a complaint under Section 142(b) of the Act would arise only if the payment is not made within 15 days from the date of receipt of notice under Section 138(b) of the Act. Once “cause of action” for filing a complaint has arisen, the subsequent re-presentation of cheque and its dishonourment would not give rise to a fresh “cause of action” for filing a complaint under Section 142 (b) of the Act.

13. In the present case, notice was issued on 21st October, 2009. As per the petitioners, same was received on 24th October, 2009; “cause of action” for filing the complaint had

arisen on expiry of 15th day from 24th October, 2009. Complaint could have been filed within one month from the date on which “cause of action” had arisen. Admittedly, complaint has not been filed within one month from the date when “cause of action” had arisen in favour of the respondent. It was filed on 8th January, 2010, that is much beyond the period of limitation as envisaged under the Act. Accordingly, complaint No. 2178/1/2010 titled M/s. Stup Consultants Pvt. Ltd. vs. M/s. Indrapuram Habitat Centre Pvt. Ltd. & Anr. pending in the court of Metropolitan Magistrate, New Delhi is quashed.

14. Petition is disposed of in the above terms.

A.K. PATHAK, J.

MARCH 29, 2011

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