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THE HIGH COURT OF DELHI AT NEW DELHI

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Crl.A.No. 953/2008

Reserved on:25.11.2011

Pronounced on:09.12.2011

COMPUTECH ELECTRONICS

..... Appellant

Through : Mr. Pradeep Kumar Arya, Adv. with
Mr. Narinder Choudhary, Mr. Rana
Kunal, Mr. Shobit Mittal, Mr. Anuj
Tomar & Mr. Ashish Sharma, Advs.

versus

UNITEL TECHONOLOGY

..... Respondent

Through : Mr. Amarjeet, Adv. along with
respondent, Mr. Joginder Singh.

CORAM:

HON'BLE MR. JUSTICE M.L. MEHTA

M.L. MEHTA, J.

1. This is an appeal under Section 378 CrPC read with Section 482 CrPC against the order dated 28.7.2008 of learned M.M. passed in C.C. No. 6057/1/06/01.

2. The appellant, admittedly was a partnership firm and the complaint was filed by its General Manager Sh. Rajwant Singh Sachdeva before the learned M.M. against the respondent. The allegations against the respondent were that they had purchased goods from the petitioner and in lieu thereof issued a cheque of Rs. 1,50,000/- dated 22.12.2000. The said cheque on presentation got dishonoured on account of 'insufficient funds'. The appellant contacted the respondent over telephone and disclosed the fact of

dishonouring of the cheque. On respondent's request, the cheque was again presented for clearance, but was returned due to insufficient funds vide Memo dated 27.01.2011.

3. The respondent raised the question of maintainability of the complaint in the present form alleging that the cognizance of the complaint taken by the M.M. was bad in law in terms of Section 142 of the Negotiable Instruments Act. It was averred that the complaint was filed through the General Manager of the partnership firm without any permission of the firm. It was submitted that since Mr. Rajwant Singh Sachdeva was neither the payee of the said cheque nor was the holder in due course of the cheque and that being so, learned M.M. was not competent to take cognizance against the respondent. On merits, the case of the respondent was that the cheque in question was given to the complainant as advance payment of the goods to be supplied to the respondent and since the goods were not supplied, there was no liability of the respondent to make any payment.

4. Learned M.M. recorded the finding of the fact that since the complaint was filed by the partnership firm through its General Manager who was not authorized nor was the payee or the holder of the cheque in due course, the complaint was not maintainable. On merits also, he recorded that Rajwant Singh Sachdeva, who examined himself had stated that complainant/petitioner was maintaining its books of accounts in the regular course of business. However, from the evidence that was produced by the complainant, the accounts were seen by the M.M. to be not properly maintained. The respondent had confronted Mr. Sachdeva in his cross examination with two invoices Ex.CW1/D2 and CW1/D3 which were seen to have been issued by the complainant against same challan. This fact was admitted by Mr. Sachdeva. He also stated that the complainant sought recovery of Rs. 1,70,000/- , but later on, it was found that the amount due from the respondent

was only Rs. 1,17,000/-. Taking that it was only Rs. 1,17,000/- due from the respondent, then it is not understandable as to why the latter would have given the cheque of Rs. 1,50,000/- to the appellant. This also leads to suggest that the appellant was not sure about its case as sought to be set out by it through its attorney. In fact, the respondent had also in reply to the notice of demand stated about two invoices for the same challan. Mr.Sachdeva, in his cross examination tried to explain issue of two invoices by mistake. He however admitted that he did not intimate the respondent in this regard. He rather stated that it was not in his knowledge. Interestingly, he stated that he was the attorney holder of the complainant firm and was well acquainted with the facts and stated that accounts were checked at the closing of the financial year, but did not come to know about two invoices issued for the same challan. Based on this shaky evidence, the learned M.M. arrived at the finding of the fact that the complainant/petitioner had not verified its accounts and the same were not being maintained properly and had further not verified the same despite receipt of reply of its legal notice. Since the accounts were not maintained properly, a serious and genuine doubt was raised whether there was any legally enforceable liability existing against the respondent. In view of all this, the plea of the respondent that the cheque in question was given to the appellant (complainant) as advance payment of goods to be supplied, but since the same were not supplied and so there was no liability to make any payment, rebuts the presumption that would have arisen against the respondent that the cheque was in discharge of liability.

5. With regard to the finding of learned M.M. regarding the petitioner not maintaining its regular books of accounts and that the accounts so maintained by it were not reliable and there was no ascertained liability of the respondent demonstrated in their books of accounts and that the aforesaid cheque was

given by the respondent as advance payment of goods to be supplied, I do not see any perversity or illegality in the said order.

6. The finding of the learned M.M. with regard to the complaint being not maintainable in the present form because of Mr. Sachdeva being not payee nor holder in due course of the cheque nor having obtained any permission to prosecute the complaint, the same does not appear to be tenable in law. It is undisputed that Mr. Sachdeva was neither the payee nor the holder in due course of the cheque in question nor any permission was obtained by him of the partnership firm to prosecute the complaint. It is noted that though the complaint was titled as M/s. Computech Electronics Through its General Manager Sh. Rajwant Singh Sachdeva and there was no mention of his being authorized representative or attorney of the firm, but the fact is that in the complaint, not only it was averred that Mr. Sachdeva is the power of attorney of the firm, but power of attorney so executed in his favour was also filed alongwith. The non-mentioning of the word attorney or authorized representative in the title of the complaint would be insignificant in view of the specific pleadings made in this regard along with the supporting document of power of attorney.

7. A firm is nothing but a legal entity which carries on its functions through its employees in their various roles. The intent behind executing the power of attorney is to facilitate the representation of a firm in the legal as well as other requisite proceedings. If the restricted approach of disallowing the attorney holder to file a complaint on behalf of the firm is pursued, then the very purpose of the power of attorney will be frustrated and the same would not be in consonance with the purpose of making someone attorney of the firm to perform its functions. The requirements of Section 142 N.I. Act would stand fulfilled when the complaint was made in writing and was

instituted by payee or the holder in due course or someone duly authorized by the firm. Though Section 142 of the Act does not specifically envisages filing of complaint by the attorney, but in the case of company or partnership firm, the matter was to be covered by general law which would permit filing of a complaint by firm through duly authorized representative or attorney and in that way of the matter, the requirement of Section 142 of the Act would also stand fulfilled.

8. In view of the above discussion, while recording the finding in favour of the petitioner that the complaint was maintainable, I do not see any illegality in the order of M.M. regarding the petitioner having failed to establish ascertained liability of the respondent. Consequently, the appeal merits dismissal. It is dismissed accordingly.

M.L. MEHTA, J.

December 09, 2011

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