

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

RESERVED ON : 4th FEBRUARY, 2013

DECIDED ON : 3rd MAY, 2013

+ CRL.A. 1239/2011

M/S. TOTAL FINAELF INDIA LIMITED Appellant

**Through : Mr.Sanjiv Bahl, Advocate with
Mr.Eklavya Bahl, Advocate.**

versus

SMT.RASHMI PARNAMI

....Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.GARG, J.

1. The present appeal has been preferred by the appellant-M/s.Total Finaelf India Ltd. challenging order dated 17.02.2007 in Complaint Case No.5977/1/04 under Section 138 Negotiable Instruments Act by which the respondent was acquitted.

2. I have heard the learned counsel for the appellant and have gone through the written synopsis filed by the respondent. It reveals that the appellant filed a complaint case under Section 138 Negotiable Instruments Act alleging that the respondent committed default in making

payments for the goods supplied to her being distributor. It was alleged that with great persuasion, the respondent issued nine cheques detailed in Para 06 of the complaint amounting to ₹ 11,08,546.78/- for the outstanding dues. The cheques when presented were dishonoured with the remarks '*not arranged for*' vide bank return memo dated 21.10.1997 which was received on 12.11.1997. Demand notice dated 23.11.1997 sent to the respondent vide Registered AD was returned with the endorsement 'not met' on 02.12.1997. The respondent was served of the legal notice sent through UPC. The respondent failed to make the payment despite demand notice.

3. Learned counsel for the appellant urged that the complaint case was within limitation as the cause action arose on 02.12.1997 when the complainant came to know 'refusal' of the notice sent by Registered AD. The respondent, in the reply to the demand notice falsely alleged that she was served with the legal notice sent through UPC on 27.11.1997. The Trial Court fell into grave error in holding that the complaint case filed on 15.01.1998 was barred by limitation. He further urged that the cheques in question were issued by the respondent in the discharge of liability to clear the outstanding dues for purchase of lubricants sent through various invoices (Ex.CW-1/6 to CW-1/24). The distributorship agreement dated

17.04.1997 was proved as Ex.CW-1/4. The cheques in question were not given as 'security' as alleged. The respondent could not establish that goods supplied were defective; no such complaint was ever lodged by her with the complainant company.

4. Learned counsel for the respondent in the written synopsis emphasized that the complaint was barred by limitation as the legal demand notice sent through UPC was received on 27.11.1997 and it was duly conveyed to the appellant in the reply to the demand notice. The complainant did not adduce cogent evidence to prove that the cheques in question were issued towards existing debt or liability. The Trial Court has given valid reasons to acquit the respondent and no interference is called for.

5. It is undisputed that the demand notice dated 23.11.1997 (Ex.CW-1/44) was sent through Registered AD and UPC. The postal receipt and UPC receipt have been exhibited as Ex.CW-1/45 & Ex.CW-1/46. The demand notice sent through Registered AD was returned undelivered (Ex.CW-1/47). The respondent admitted receipt of demand notice through UPC. Reply (Ex.CW-1/48) to the demand notice is also not at issue. In the reply (Ex.CW-1/48), the respondent claimed receipt of notice on 27.11.1997. Admittedly, notice sent through Registered AD was

not delivered to the respondent. The respondent categorically claimed on 08.12.1997 that the demand notice sent through UPC was received by her on 27.11.1997. Apparently, 27.11.1997 is the date when the service of legal notice was effected upon the respondent and the cause of action arose to the appellant that day. The respondent was not aware if the complainant had sent any demand notice through Registered AD. The endorsement on the registered envelope by the Postal Authorities reveals that on 02.12.1997 the addressee did not meet the post-man. The registered letter was returned to the complainant. It cannot be presumed that the legal notice came to the respondent's knowledge on 02.12.1997. The Trial Court gave cogent reasons to conclude that the complaint case was filed beyond the period of limitation. I find no good reasons to deviate from the said findings.

6. On merits also, the appellant could not establish that the cheques in question were given in consideration of existing debt or liability. Soon after getting demand notice on 27.11.1997, in the reply (Ex.CW-1/48), the respondent categorically denied that the cheques in question were given towards existing debt or liability. She pleaded that the cheques in question were given as security at the time of her appointment as distributor. The burden was heavily upon the appellant to prove that the

cheques in question were towards the legal debt or liability. In the demand notice or in the complaint, the appellant did not specify the exact date when nine cheques in question were given at one go. It is unclear as to whom the cheques in question were handed over and at which place. These cheques are of different dates i.e. 30.04.1997 (four cheques), 30.05.1997 (four cheques) and 30.06.1997 (one cheque). The amount for which the cheques were issued is not in round figures but for a specific odd amount. In the complaint, it is mentioned that after great persuasion, the respondent issued these cheques drawn on Indian Overseas Banks towards 'overdue outstanding dues'. Inference can be drawn that when these cheques were issued, an amount of ₹ 11,08,546.78/- was due from the respondent. The appellant did not elaborate as to how much debt/liability was there on any specific date prompting the respondent to issue the cheques in question. It is unbelievable that the respondent issued cheques in one sequence for different dates and different amount instead of issuing one cheque for the 'overdue outstanding liability' as on date. It is unclear as to why the appellant accepted cheques in the month of October or so for the dated 30.04.1997 or 30.05.1997. These cheques were not presented for encashment soon after issuance. Contrary to that, all the cheques in question were presented on the same date in the bank and were

dishonoured. The appellant has admitted payment by way of bank drafts amounting to ₹ 60,500/- from the respondent after service of demand notice dated 23.11.1997. This fact does not find mention in the complaint. It appears that appellant has not examined the official who received the purchase orders or raised invoices. The distributor agreement (Ex.CW-1/4) came into existence on 17.04.1997. The invoices (Ex.CW-1/5) pertain to the period from 31.11.1997 to 04.06.1998 showing balance due as 1103568.29. Credits given for incentives were reversed. Ex.CW-1/5 further depicts that even after the issuance of the cheques in question, payments were made by demand drafts and cheques.

7. The Trial Court has given detailed reasons to arrive at the conclusion that the respondent had rebutted the presumption under Section 139 Negotiable Instruments Act. The appellant could not prove that the cheques in dispute were issued against any debt or liability. Mere liability of the respondent to pay her dues towards purchase of goods (if any) is not enough to proceed under Section 138 Negotiable Instruments Act as the appellant has civil remedy to recover outstanding dues. No interference is called for in the reasoned impugned order.

8. In the light of above discussion, the appeal filed by the appellant lacks merits and is dismissed. Trial Court record be sent back forthwith.

(S.P.GARG)
JUDGE

MAY 03, 2013

tr