IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 97 OF 2011

Energetic Films Pvt. Ltd.
(now known as Sunshine Picture
Pvt. Ltd.) ..Petitioner
v/s.

Headstart Films Pvt. Ltd. & Ors. ..Respondents

Mr. Ramesh Tiwari i/b. Bagla Dandekar & Co. for the Petitioner.
Mr.Sujit Suryawanshi i/b. M/s. Vigil Juris for the Respondent.
Mr.J.H.Ramugade, APP for the State.

CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : OCTOBER 12, 2015.

P.C.

1. This petition is preferred against the judgment dated 24.11.2010 whereby the learned Addl. Sessions Judge, Gr. Bombay allowed the Revision Application No. 964 of 2010 and set aside the order dated 30.7.2010 whereby the process was issued under Section 138 of the Negotiable Instruments Act.

2. The petitioner had filed complaint under Section 138 of the N.I.Act against the respondent no.1 company, and the respondent nos.2 and 3 being the directors of respondent no.1 company. By

order dated 30.07.2010 the learned Metropolitan Magistrate issued process against the respondent nos.1 to 3 for offence under Section 138 r/w. 141 of the Negotiable Instruments Act. The respondent nos.1 to 3 challenged the order in Criminal Revisions Application No. 964 of 2010. The learned Sessions Judge, Gr. Bombay allowed the revision and set aside the order dated 30.7.2010 relying mainly on the decision of this Court in Krishna Texport and Capital Markets Ltd. vs. Ila A. Agrawal & Ors. Cri. Appln. 2174 of 2007, and consequently dismissed the complaint on the ground that no individual notice was given to the respondent nos.2 and 3. Learned Counsel for the petitioner has submitted that the judgment of Krishna Texport and Capital Markets Ltd has now been set aside by the three Judges Bench Apex Court reported in 2016(6) LJSoft (S.C) 14.

3. I have gone through the judgment of Krishna Texport & Capital Markets Ltd., wherein the Apex Court has held that:

> *"13. With these principles in mind, we now consider the provisions in question. According to Section 138, where any cheque drawn by a person on an account maintained by him is returned by the Bank unpaid for reasons*

mentioned in said Section such person shall be deemed to have committed an offence. The proviso to the Section stipulates three conditions on the satisfaction of which the offence is said to be completed. The proviso inter alia obliges the payee to make a demand for the payment of said amount of money by giving a notice in writing to "the drawer of the cheque" and if "the drawer of the cheque" fails to make the payment of the said amount within 15 days of the receipt of said notice, the stages stipulated in the proviso stand fulfilled. The notice under Section 138 is required to be given to "the drawer" of the cheque so as to give the drawer an opportunity to make the payment and escape the penal consequences. No other person is contemplates by Section 138 as being entitled to be issued such notice. The plain language of Section 138 is very clear and leave no room for any doubt or ambiguity. There is nothing in Section 138 which may even remotely suggest issuance of notice to anyone other than the drawer.

14. Section 141 states that if the person committing an offence under Section 138 is a Company, every director of such company who was in charge of and responsible to that company for conduct of its business shall also be deemed to be guilty. The reason for creating vicarious liability is plainly that a juristic entity i.e. a Company *would be run by living persons who are in charge of its affairs and who guide the actions of that company and that if such juristic entity is guilty, those who were so responsible for its affairs and who guided actions of such juristic entity must be held responsible and ought to be proceeded against. Section 141 again does not lay down any requirement that in such eventuality the directors must individually be issued separate notices under Section 138. The persons who are in charge of the affairs of the company and running its affairs must naturally be aware of the notice of demand under Section 138 of the Act issued to such company. It is precisely for this reason that no notice is additionally contemplated to be given to such directors. The opportunity to the 'drawer' Company is considered good enough for those who are in charge of the affairs of such Company. If it is their case, that the offence was committed without their knowledge or that they had exercised due diligence to prevent such commission, it would be a matter of defence to be considered at the appropriate state in the trial and certainly not at the stage of notice under Section 138.*

If the requirement that such individual notices to the directors must additionally be given is read into the concerned provisions, it will not only be against the plain *meaning and construction of the provision but will make the remedy under Section 138 wholly cumbersome. In a give case the ordinary lapse or negligence on part of the Company could easily be rectified and amends could be made upon receipt of a notice under Section 138 by the Company. It would be necessary at that point to issue notices to all the directors, whose names the payee may not even by aware of at that stage. Under Second proviso to Section 138 the notice of demand has to be made within 30 days of the dishonour of cheque and the third proviso gives 15 days time to the drawer to make the payment of the amount and escape the penal consequences. Under clause (a) of Section 142, the complaint must be filed within one month of the date on which the cause of action arises under the third proviso to Section 138. Thus, a complaint can be filed within the aggregate period of seventy five days from the dishonour, by which time a complainant can gather requisite information as regards names and other details as to who were in charge of and how they were responsible for the affairs of the Company. But if we accept the logic that has weighed with the High Court in the present case, such period gets reduced to 30 days only. Furthermore, unlike proviso to clause (b) of Section 142 of the Act, such period is non-extendable. The* *summary remedy created for the benefit of a drawee of a dishonoured cheque will thus be rendered completely cumbersome and capable of getting frustrated."*

4. In the light of the law laid down by the Apex Court, the order of the Sessions Judge cannot sustain. Under the circumstances, and in view of the discussion supra, the petition is allowed. The impugned order dated 30.7.2010 is quashed and set aside.

5. Both the parties are directed to appear before the trial court on 30.11.2015 at 11.00 a.m.

(ANUJA PRABHUDESSAI, J.)