

**IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH.**

Cr.M.No.A-734-MA of 2009 (O&M)  
DATE OF DECISION : 20.7.2015

Sunrise Immigration Consultants(P) Ltd.

APPELLANT

VERSUS

Gurmit Singh Deogan and another

RESPONDENTS

**CORAM : HON'BLE MR.JUSTICE MAHESH GROVER**

1. Whether reporters of Local Newspapers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest ?

Present:- Shri Sudhir Sharma, Advocate for the appellant.

Shri Rakesh Kaundal, Advocate for the respondents.

**MAHESH GROVER, J.**

The appellant impugns the order dated 8.7.2009 by which the respondents have been absolved of their liability under Section 138 of the Negotiable Instruments Act in a complaint preferred by the appellant.

The genesis of the dispute is an agreement executed between the appellant and the respondents, the relevant portion of which is extracted here below :-

“8. That client shall provide all relevant documents required as per kit supplied within 45 days of engaging services of Sunrise Immigration Consultants (P) Ltd. ; Sunrise International Legal Services, failing which the file of client shall be closed and client shall be liable to pay full fees determined at the time of engaging the services of Attorney.

9. That in a situation arising during the period from the date of engagement to the submission of the case if there is any change in the Immigration laws or assessment policy of the assessing authority and as result of change in immigration laws or assessment rules, the client becomes ineligible or there is change in his status e.g. from permanent residency to work visa, meeting the new requirement of English or undertaking IELTS test before assessment etc. etc., then client shall have to meet new criteria or new set of rule as laid down by immigration department/assessment or any other statutory body for this purpose and if such situation arises, then Sunrise Immigration Consultants (P) ; Sunrise International Legal Services Ltd. shall not be liable to refund the initial deposit given by client at the time of engagement of services and no claim whatsoever for refund of initial payment shall be entertained.

10. That as per the immigration laws/regulations, client is required to get his/her qualification/experience assessed from various prescribed authorities, whose offices are located overseas, Sunrise will take every possible care/steps for safety of client's documents. Attorney will forward original

educational certificate/experience documents to the concerned authorities through first class courier. In spite of all these precautions if mishap still occurs with regard to the documents forwarded by way of loss of packet, attorney shall not be responsible for any such loss.

11. That if for any reason, the Attorney withdraws his services in this case, then he has refund the entire money. Similarly, if for any reason, the client becomes dis-interested pursuing his application for permanent immigration or withdraws his case, then in such an event, the Attorney shall be entitled to full payment of fee (including Bank Cheque furnished by the client under stipulation No.1(b) of this Contract of Engagement).”

Learned counsel for the appellant contends that a cheque for Rs.54,000/- was issued on account of the discharge of liability pursuant to the agreement. The respondents in turn had taken up the plea that the appellant had failed to perform his part of the contract as envisaged in the agreement and therefore, they were not liable to pay the amount. He further states that the cheque was undated and was given to the appellant to be encashed after the compliance had been made by him in terms of the afore-extracted provisions of the contract.

The learned trial Court noticed that the appellant had failed to establish any liability the discharge of which would require the issuance of cheque by the respondents. It further noticed that it was a case where at the time of issuance of the cheque, no liability existed and it was merely a future liability contingent on the terms envisaged in the contract itself.

On due consideration of the matter, I am of the view that no fault can

be found with the reasoning of the trial Court. The aforesaid terms of the agreement concededly between the parties would require performance by the appellant and payment by the respondents on satisfaction of certain terms which according to them were not satisfied. If that be so, then I am of the opinion that it would be a matter of evidence as to whether the appellant had discharged the liability in terms of the agreement so as to satisfy the corresponding liability of the respondents to make the payment in terms of the contract entered into between the parties since the liability to pay the amount would be contingent upon certain conditions. The trial Court was right in observing that established liability was not evident.

It is now stated that if the appellant had performed his liability, he would have been able to travel abroad. It is only because of lack of compliance on the part of the appellant that he still continues to be in the country. Therefore, I am of the opinion that whether the cheque was actually issued in discharge of the existing liability or even future liability, would be a question of evidence to be established during the course of proceedings in case the same are initiated.

The petition is therefore, dismissed leaving the appellant to his remedies under the law.

July 20, 2015  
GD

(MAHESH GROVER)  
JUDGE