

233 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Date of Decision:10.02.2015

1. CRM-M No. 13870 of 2011(O&M)

Premier Brands Private Ltd. and another

.....Petitioners

versus

M/s Total Sports & Entertainment India
Pvt. Ltd.

..... Respondent

2. CRM-M No. 13902 of 2011(O&M)

Ms. Rashmee Seengal and others

.....Petitioners

versus

M/s Total Sports & Entertainment India
Pvt. Ltd.

..... Respondent

3. COCP No. 1446 of 2013 in
CRM-M No.13870 of 2011 of 2011(O&M)

M/s Total Sports & Entertainment India
Pvt. Ltd.

.....Petitioner

versus

Suresh Kumar Seengal and others

..... Respondents

CORAM: Hon'ble Mr. Justice Ajay Tewari

Present: Mr.Sanjeev Sharma, Advocate
for Premier Brands Pvt.Ltd and others.

Mr.Shyam Murjani, Advocate for
M/s Total Sports and Entertainment India Pvt.Ltd.

1. Whether Reporters of local papers 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?

Ajay Tewari, J. (Oral):

The aforesaid petitions bearing Nos. CRM-M No. 13870 of
2011 and 139012 of 2011 have been filed against the summoning of the

petitioners in a case under Section 138 of the Negotiable Instruments Act whereas COCP No. 1446 of 2013 has been filed by the respondent M/s Total Sport and Entertainment India Private Limited for initiating contempt proceedings against the petitioners for violating order dated 26.3.2013. Since common questions of law and facts are involved, all the three petitions are being decided by this common order. For ready reference facts of CRM-M No.13870 of 2011 are being taken. In this case on 17.09.2013 the payment of the cheque amount was made and the following order was passed:-

“Learned counsel for the respondent has received the original draft bearing No. 000681 dated 12.7.2013 for Rs. 19,99,600/- in favour of the respondent.

Learned counsel for the petitioners submits that this draft is being handed over without prejudice to the rights of the petitioners.

Learned counsel for the respondent submits that no such condition can be imposed by the petitioners in view of the earlier direction.

The matter is adjourned to 13.1.2014 so as to enable the respondent to encash the draft.

In the meanwhile, petitioner No.2 is permitted to appear before the trial Court through counsel, subject to usual undertakings.”

The only dispute now is as to whether the petitioners could impose the condition that the draft is being handed over without prejudice to his rights. The contention of learned counsel for the petitioners is that actually the petitioners were not liable to make any payment to the respondent under the contract but this payment was made only because the petitioners wanted to avoid facing criminal proceedings and with regard to the liability of the petitioners a civil suit is pending and in case the petitioners are able to establish in that civil suit that no amount is payable from them they should be entitled to recover this payment.

Learned counsel for the respondent on the other hand states that as far back as 18.07.2011 the petitioners had offered to make the payment without prejudice to their rights but the respondent was not ready to accept any conditional payment and that is why the payment was not accepted at

that stage.

On 26.09.2012 the following order was passed:-

“ Learned counsel for the petitioner has stated that petitioner is ready to pay the cheque amount.
List on 12.10.2012.”

Thereafter on 12.10.2012 the following order was passed:-

“ Learned counsel for the petitioners has urged that he be given some time to settle the matter with the complainant.
List on 23.11.2012.”

The matter was repeatedly adjourned and then on 29.01.2013 the following order was passed:-

“ On request of counsel for the petitioners, adjourned to 6.2.2013 to enable him to bring the draft of the amount, which he has offered to pay.

A copy of this order be placed on the connected file.”

On the next date i.e. 6.2.2013 the following order was passed:-

“ Counsel for the petitioner prays for one week more time to bring a draft as the petitioner is in the process of arranging finance.

Adjourned to 15.02.2013.

A photo copy of this order be placed on the connected file.”

Then on 15.02. 2013 the following order was passed:-

“ Learned counsel for the petitioners prays for some more time to arrange finance. There being no opposition to the request, the case is adjourned to 27.02.2013.

On that date let the Chairman and Managing Director remain present before this Court with draft.

A photo copy of this order be placed on the connected file.”

Then on 27.02.2013 the following order was passed.

“ The Chairman and Managing Director were asked to remain present before the Court with draft but they have not come present.

In the interest of justice adjourned to 08.03.2013.

A photo copy of this order be placed on the connected file.”

The matter was again adjourned and on 18.03.2013 the

following order was passed:-

“ Despite directions, Managing Director has not complied with the orders issued by this Court.

Let notice be issued to the Managing Director as to why contempt proceedings be not initiated against him.

Let him remain present before the Court on 26.03.2013. He shall not be permitted to appear through counsel.

A photo copy of this order be placed on the connected file.”

On 26.03.2013 the following order was passed:-

“Mr. Suresh Kumar Seengal, Chairman-cum-Managing Director of the petitioner concern is present in the Court. He has tendered his unconditional apology for not complying with the directions of this Court to remain present. The same is accepted.

Counsel for the petitioner has also handed over a Cheque No. 431660 dated 15.04.2013 amounting to `19,99,600/- (Rupees Nineteen Lacs Ninety Nine Thousand and Six Hundred Only) to the counsel for the respondent.

Mr. Suresh Kumar Seengal, Chairman-cum-Managing Director who is present in the Court in person has personally assured and given an undertaking before the Court that his cheque when presented will be honoured and in case the same is not honoured he would remain liable to discharge the liability besides liability arising out of undertaking given before the Court.

The petitioner shall remain bound by the undertaking besides incurring responsibility in case of failure of encashment of this Cheque.

Adjourned to 23.04.2013.

A photo copy of this order be placed on the connected file.”

Thereafter the cheque which was handed over by the petitioner was again dishonoured and the respondent filed COCP No. 1446 of 2013. It was only when the petitioner had tied himself up in knots that the payment was made as mentioned on 17.09.2013. As per learned counsel having not made any preconditions on at least five occasions the petitioner could not have made this condition on 17.09.2013. Learned counsel has argued that history of the case would clearly show that prior to 17.09.2013 the petitioners were only trying to seek time by one stratagem or another.

In my opinion there is some weight in the arguments of learned counsel for the respondent. It is not disputed that when the petitioners filed this petition there was no averment that they were ready to make any

payment with or without any condition. Resultantly on the 1st day when the petitioners made the offer i.e. on 26.09.2012 it was incumbent upon them to have laid down whatever conditions they wanted because then the respondent would have the liberty to either accept or reject the same. Not only that, a perusal of the orders reproduced above clearly reveals that thereafter also on various dates time was sought for arranging the money but no such condition was imposed. The most telling feature is the order dated 26.03.2013 when the cheque was handed over because even on that day the cheque(which was subsequently dishonoured) was handed over and even on that date no such condition was imposed by the petitioners.

In the circumstances I regret my inability to agree with learned counsel for the petitioners that the petitioners should be given liberty to dispute at least the liability of this cheque. Learned counsel for the respondent has stated that in case the petitioners are not given the liberty to dispute the liability of the cheque in dispute he would have no objection to this petition being allowed since the respondent has received the payment of the cheque.

Resultantly the aforesaid petitions bearing CRM-M Nos. 13870 and 13902 of 2011 are allowed on the ground that the payment has been made and not on merits. The complaint and the summoning order stand quashed. It is, however, clarified that the petitioners will not be able to dispute the liability of Rs. 19,99,600/- which they have paid to the respondent. However, apart from this liability the petitioners would be at liberty to establish that they have no other liability towards the respondent.

The contempt petition bearing COCP No. 1446 of 2013 is also disposed of.

Since the main case has been decided, the Criminal Misc.Application, if any also stands disposed of.

(AJAY TEWARI)
JUDGE

February 10, 2015
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