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

Date of Decision: August 14, 2015

+ CRL.M.C.1906/2013 & CRL.M.A.5874/2014

KHANNA TRADERS

.....Petitioner

Through: Mr. Gaurang Kainth, Mrs. Biji
Rajesh & Mr. Sujoy Chatterjee,
Advocates

versus

SCHOLAR PUBLISHING HOUSE P. LTD.
& ANR.

.... Respondents

Through: Mr. Chirag Jamwal & Mr. Ajay
Upadhyay, Advocates

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT

(ORAL)

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In proceedings under Section 138 of *Negotiable Instruments Act, 1881* petitioner is a complainant, who seeks quashing of trial court's order of 23rd February, 2013 and revisional court's order of 3th April, 2013 vide which petitioner's prayer for determination by forensic science expert as to whether endorsements made on the back of the cheques in question (Ex.C1/D4 and C1/D5) were made before or after putting the seal by the drawee bank is declined. Both the courts below have held that the application for such expert opinion has been filed after delay of six

years and the genuineness of the cheques in question was not disputed and so at the fag end petitioner cannot be allowed to fill in the lacuna. At the hearing, learned counsel for petitioner submits that delay of six years cannot stand in the way of petitioner for the reason that another prayer of petitioner which was also after delay of six years for the recall of official from the concerned bank already stands allowed by the impugned orders and so on the ground of delay, scientific examination of the cheques in question cannot be denied to petitioner, otherwise it will cause miscarriage of justice.

Learned counsel for respondent-accused supports the impugned order and submits that there is no illegality in the impugned orders as the endorsements on the cheques in question were admittedly made by respondent-accused.

Upon hearing and on perusal of impugned orders and material on trial court record, I find that petitioner cannot be non-suited on the ground of delay because another prayer of petitioner which was similarly delayed has been already allowed by the courts below. On bare perusal of cheques in question and in view of evidence of Branch Manager of the bank in question, I do find that the question whether the endorsements on the back of these cheques was made at the time of tendering or thereafter needs to be examined as it goes to the root of the matter. During the course of hearing, it was brought to the notice of this Court that by the electron microscopic examination of the endorsements on the back of the cheques, it can be determined whether the ink of the pen is above or below the stamp of the concerned Bank. It was also submitted on behalf of petitioner that such comparison is essential for just decision of the case

and petitioner ought to be permitted at its expense to get the aforesaid scientific examination done from a private expert as it would cause no prejudice to respondent-accused who has right to cross examine such an expert as and when he deposes.

In the considered opinion of this Court, the scientific examination of the endorsements on the back of cheques in question is essential to determine whether the ink of the endorsements is below or above the Bank stamp. Impugned orders are accordingly quashed with direction to trial court to permit petitioner to get a scientific examination on the endorsements on the back of the cheques in question from a private expert at the expense of petitioner and this exercise be got conducted with expedition.

With aforesaid direction, this petition is disposed of while not commenting upon merits of this case, lest it may prejudice either side at trial.

Trial court record be sent back forthwith.

(SUNIL GAUR)
JUDGE

AUGUST 14, 2015

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