

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

% Decided on: 30th August, 2016

+ CRL.M.C. 1782/2011 & CrI.M.A. 6406/2011

RELIANCE INDUSTRIES LTD.

.... Petitioner

Represented by: Mr. Mohit Mathur, Sr. Adv.
with Mr. Vishnu Sharma, Adv.

versus

IMPERIAL PIGMENT PVT. LTD.

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The petitioner filed three complaint cases being CC Nos. 2206/2001, 2207/2001 and 2144/2001 against the respondent under Section 138 Negotiable Instruments Act ('NI Act') in the year 2001. After the evidence by way of affidavit of the authorized representative and its witnesses was filed by the petitioner and witnesses examined, learned Metropolitan Magistrate issued summons in the three complaint cases pursuant to which respondent entered appearance and the complaints were fixed for cross-examination of the witnesses of the petitioner when on 28th July, 2010 this Court in a batch of petitions reported as 171 (2010) DLT 51 Rajesh Agarwal Vs. State & Anr. laid down guidelines for summary trial procedure to be followed for quick disposal of complaints under Section 138 NI Act as under:-

"17. The summary trial procedure to be followed for offences under Section 138 N.I. Act would thus be as under:

Step I : On the day complaint is presented, if the complaint is accompanied by affidavit of complainant, the concerned MM shall scrutinize the complaint & documents and if commission of offence is made out, take cognizance & direct issuance of summons of accused, against whom case is made out.

Step II : If the accused appears, the MM shall ask him to furnish bail bond to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. and enter his plea of defence and fix the case for defence evidence, unless an application is made by an accused under Section 145(2) of N.I. Act for recalling a witness for cross examination on plea of defence.

Step III : If there is an application under Section 145(2) of N.I. Act for recalling a witness of complainant, the court shall decide the same, otherwise, it shall proceed to take defence evidence on record and allow cross examination of defence witnesses by complainant.

Step IV : To hear arguments of both sides.

Step V : To pass order/judgment.”

2. Based on the decision of this Court in Rajesh Agarwal(supra), learned counsel for the petitioner contended before the learned Trial Court that the witnesses of the complainant be recalled for cross-examination only after application under Section 145(2) NI Act was filed by the respondent disclosing the defence and to see whether cross-examination was required.
3. Vide the impugned order dated 31st January, 2011 the said request of the petitioner was turned down by the learned Trial Court in the above-noted three complaint cases as under:-

“The Ld. Counsel for the Complainant has relied upon the law laid down in the case of Rajesh Aggarwal Vs. State whereby procedure for summary trial is laid down by the Hon’ble High

Court of Delhi and has demanded that the complainant be recalled for cross-examination only after an application u/s 145(2) NI Act is moved disclosing the defence of the accused and the points on which the accused is desirous of cross-examining the complainant.

Submissions taken on record.

Arguments heard.

The law as laid down in the above cited case does not mention or direct in any way the trial Courts to switch over to the procedure given therein and to commence a de novo trial of the already pending cases which are being conducted in the manner and procedure prescribed by Section 262 Cr.P.C. Further, in the present case this Court has already ordered the cross examination on 08.08.2005. In these circumstances, it is not to be construed the mandate of the law laid down in Rajesh Aggarwal that all the cases pending the determination thereof be carried out in accordance with the procedure laid down therein. The law laid down therein is not to be effected retrospectively.

Hence, the accused may cross examine the complainant in pursuance of earlier orders.

Put up for cross examination of the complainant on 30.05.11.”

4. A perusal of the decision in Rajesh Agarwal (supra) itself shows that this Court was of the view that the trial under Section 138 NI Act cannot be carried out like any other summons trial under IPC offences which frustrate the very purpose of summary disposal of these complaints. This Court held that thus in all cases under Section 138 NI Act once evidence is given by way of affidavit at the stage of pre-summoning, the same be read in evidence by the Court at post summoning stage as well and the witnesses need not be

recalled unless Court of learned Metropolitan Magistrate for reasons, considers it necessary.

5. The guidelines laid down by this Court in Rajesh Agarwal (supra) were obviously prospective in nature and did not lay directions that in all cases where witnesses were under cross-examination, the evidence so recorded be scrapped and de novo trial started after filing an application under Section 145(2) NI Act.

6. Finding no infirmity in the impugned order, the petition and the application are dismissed.

7. Trial Court record be sent back forthwith.

(MUKTA GUPTA)
JUDGE

AUGUST 30, 2016
‘v mittal’