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

+ **CRL.M.C. 3015/2016**

APAR INDUSTRIES LIMITED

..... Petitioner

Represented by: Mr. A.K. Srivastava and Mr.
Arvind Kumar Srivastava,
Advocates.

versus

ALLIANCZ POLY-CHEM OVERSEAS LIMITED..... Respondent

Represented by: None.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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23.08.2016

Crl. M.A. No. 12971/2016 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 3015/2016 and Crl. M.A. No. 12972/2016 (Stay)

1. The petitioner complainant in CC No.269/1 titled as Apar Industries Pvt. Ltd. vs. Alliancz Poly-Chem Overseas Ltd. & Ors. under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') filed an application and sought leave of the Court to file documents which related to debt confirmation by the respondent and to examine accused Nos. 2 and 3, that is, Rajiv Gulati and Sanjay Gulati as per Section 143 of the NI Act summarily on the basis of this documentary evidence. This application dated 2nd June, 2015 was filed by the petitioner at the stage when AR of the complainant was under cross-examination.

2. The contention of learned counsel for the petitioner is that though the

documents were given to the petitioner by accused No.2 on 24th March, 2011 however, initially it did not find it fit to file the same but seeing the dishonest attitude of the accused it had become imperative to place the documents on record and cross-examine the accused.

3. The Metropolitan Magistrate vide the impugned order dated 22nd December, 2015 held as under:

“6. Admittedly, at present, the case is at the stage of cross-examination of AR of the complainant and infact, AR has been partly cross-examined by Ld. Counsel of accused. It is also clear that no provision under which the present application has been moved, is mentioned in the application. Even, during arguments, Ld. Counsel for complainant has failed to show as to under which section, the present application has been moved.

7. Moreover, it is not understandable as to on what ground Ld. Counsel for complainant has prayed that the further cross-examination of AR of the complainant should not be allowed and the matter be fixed for Defence Evidence. Bare perusal of the record shows that the notice U/Sec. 251 Cr.PC was served upon accused no. 2 on 03.05.2013 and upon accused no. 3 on 09.09.2013 and thereafter, defence pleas was also recorded. Finding their defence pleas to be plausible, the case was fixed for cross-examination of the complainant witness and infact, AR of the complainant was partly cross-examined in pursuance thereto. Now, in between the cross-examination, the present application has been moved. Since, the case has already been fixed for cross-examination and infact, AR of the complainant has already partly cross-examined, the application moved by the complainant is not maintainable. If, the complainant had any grievance against the order of this Court vide which the permission was granted to the accused to cross-examine the complainant witness, the complainant could have challenged the order and now, this

objection cannot be raised before this Court that the case be straightway fixed for Defence Evidence.

8. It is further appropriate to mention here that in the prayer clause, Ld. Counsel for the complainant has prayed that accused no. 2 & 3 be examined summarily U/Sec. 143 of NI Act and the documents be put to accused no. 2 & 3. This prayer of Ld. Counsel for the complainant is not maintainable as at this stage, examination of AR of the complainant is going on and in between his cross-examination, accused no. 2 & 3 cannot be examined.

9. In the considered opinion of this Court, this is not the right stage to file any additional document on behalf of the complainant. This Court finds force in the arguments raised by Ld. Counsel for accused that at this stage, only those documents can be taken on record which are asked by Ld. Counsel for the accused during cross-examination of the complainant witness. Therefore, in the light of the above, the application deserves to be dismissed.

10. The application moved by the complainant is prima-facie not maintainable and devoid of any merits and for want of any specific provision, the same is dismissed.

4. It is not the case of the petitioner that the documents were not in its possession. Admittedly the documents have been given to the petitioner on 24th March, 2011 and thus there was sufficient time for the petitioner to have filed the documents. The petitioner was required to stand on its own legs and now cannot take the plea that since the accused persons are dishonest it has become imperative to produce the documents. Further there is no provision in the Cr.P.C. or the NI Act permitting the summary examination of the accused when cross-examination of the complainant's witnesses was going on. The petitioner could also not explain on what ground further

cross-examination of the AR of the complainant be not allowed. The prayers made before the learned Metropolitan Magistrate and before this Court are unreasonable and not as per the procedure in either the Criminal Procedure Code, 1973 or NI Act.

5. There being no infirmity in the impugned order, the present petition and the application are dismissed.

MUKTA GUPTA, J.

AUGUST 23, 2016
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