

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO. 10 OF 2003

1. M/s. Symphony Comfort Systems Limited
1A. Symphony Limited
2. Achal Bakeri, Chairman Managing Director
3. Dipak Palkar, General Manager
All having their address at
FP 12 - TP50 Bodakdev, off SG Highway
Ahmedabad 380 054, Gujarat. **... Petitioners**

vs.

M/s. Faraway Places Marketing Private Ltd.,
through their authorised signatory
Mrs. Anju K. Tandon having their office at
Swami Samarth Apartment, Bharat Society,
Chakala, Andheri (East), Mumba-400093 **... Respondent**

Ms. Panthi Desai i/by M. P. Vashi & Associates, Advocate for the
petitioners.

None present for the respondent.

Coram : Smt. R. P. SondurBaldota, J.

Date : 2nd February, 2017

JUDGMENT :

1. This petition challenges the concurrent decision of the Courts below on dropping of the proceedings under Section 138 of Negotiable Instruments Act initiated by the respondent against the petitioners. On 5th November, 1999 the petitioners had filed separate applications for their discharge/dropping of proceedings against them. The trial Court by it's common order dated 7th June, 2001 dismissed the application. Being aggrieved

by the decision of the trial Court the petitioners preferred common revision application being Criminal Revision Application No. 675 of 2001 to the Sessions Court, Mumbai. By the order dated 11th September, 2002 the criminal revision application was dismissed.

2. The brief statement of facts giving rise to the present petition is as follows :

Petitioner no.1 is a limited company, petitioner no.2 is it's Chairman and Managing Director and petitioner no.3 is it's General Manager. In the month of August-1997 the petitioners had approached the respondent company for group bookings for it's dealers under their Dealer Incentive Scheme for visit to Australia and Singapore. The respondent submitted it's quotations. Thereafter negotiations were held in person with the Director of petitioner no.1. The petitioners then forwarded the list of members of it's first group, which was to leave Mumbai on 9th November, 1997. The group consisted of 44 members including accused no.3. Thereafter on 20th October, 1997 the petitioners issued four cheques each in the sum of Rs.1,50,000/- towards 20% of the advance deposit for the proposed trip to Australia and Singapore. Thus the itinerary prepared by the respondent for the dealers of the petitioners was accepted and the quotations confirmed. The respondent then proceeded to confirm the land arrangement of hotel rooms bookings as well as the meals to be provided to the passengers on their travel and requested the petitioners for the fresh grouping list. The petitioners however thereafter suddenly went out of communication and just two days prior to the actual travel, sent a fax stating that they were rejecting the contract

with the respondent. As a consequence the respondent suffered extensive losses of about Rs.13,04,505/-, as the arrangements for the bookings were made for not just the group which was to leave on 9th November, 1997 but for three more groups of the petitioners. It deposited four cheques of the total value of Rs.6,00,000/- for encashment and called upon the petitioners to pay the balance amount of Rs.7,04,505/- due after adjusting the amount of Rs.6,00,000/-.

3. The four cheques when presented for payment were dishonoured with remark "payment stopped". According to the respondent the payment has been stopped as there were insufficient funds in the Bank accounts of the petitioners. Thereafter the statutory notice was sent and Criminal Case No. 586 of 1998 filed.

4. In their application filed on 5th November, 1999 for dropping of the proceedings, the petitioners set out essentially three grounds. Firstly that there was no written contract entered into between the parties because the offer of the respondent was never accepted by the petitioners and the offer was still at the pre-finalisation stage. Consequently there was no existing legal liability on the part of the petitioners towards the discharge of which the cheques could be considered. Secondly the list of 44 members was never supplied by the petitioners to the respondent and lastly the dispute between the parties is a civil dispute, which has been mischievously brought to the Court taking criminal matters. The respondent contested the application by filing its affidavit-in-reply dated 18th February, 2000.

5. The reasons for dismissal of the petitioners application are stated by the trial Court at paras 6 to 10 of it's impugned order. The trial court in it's well-reasoned detailed order considers the undisputed facts of the dispute to arrive at the conclusion that in fact there is a concluded contract between the parties by acceptance of the offer of the respondent. It noted that the quotation given by the respondent on 2nd September, 1997 was accepted and on 27th October, 1997 the petitioners sent a list of the members of the first group who were to leave Mumbai on 9th November, 1997. This act along with immediate forwarding of cheques on 29th October, 1997 amount to conclusion of the contract. Besides the covering letter accompanying the cheques stated that the cheques were towards 20% advance deposit for the expenses of the trips to be organised. On 4th November, 1997 just five days prior to the date of departure the list of visitors to make room arrangements was sent. This would not have been done without the concluded contract. There had been a request made by the petitioners for certain changes in the flight schedules after air-ticket arrangements for the first group had been made. The trial Court next rejected the argument of absence of legal liability for issuance of the cheques with observation that this was required to be considered at the time of evidence after giving an opportunity to the parties to lead evidence and it cannot be considered at the stage of the application. There is absolutely no infirmity in the reasons stated.

6. As regards the dispute about furnishing list of 44 members to the respondent it being a dispute of facts must be relegated to trial for evidence. Same is the situation of the

contents of the dispute being purely a civil dispute.

7. The Sessions Court has considered all the above aspects to uphold the findings of the trial Court. There being no infirmity whatsoever in the view taken by the Courts below the petition is dismissed. The petitioners shall appear before the trial Court on 6th March, 2017.

[Smt. R. P. SondurBaldota, J.]