

IN THE HIGH COURT OF JUDICATURE AT MADRAS

(Reserved on : 12.09.2017)

(Pronounced on : 8.12.2017)

CORAM:

THE HONOURABLE MR.JUSTICE RMT.TEEKAA RAMAN

Crl.O.P.No.29055 of 2014

and

M.P.No.1 of 2014

and

C.M.P.No.6885 of 2016

1. M/s. Arvind Remedies Ltd.,
Rep. by its Managing Director &
Chief Executive Officer,
B.Arvind Shah,
No.190, Poonamallee High Road,
Chennai - 600 084.
2. B.Arvind Shah,
Managing Director & Chief Executive Officer,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
3. Prof. C.M.K.Reddy,
Director,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
4. Dr.Chandra Ravindran,
Director,
M/s. Arvind Remedies Ltd.,

No.190, Poonamallee High Road,
Chennai - 600 084.

5. V.R.Mehta,
Director,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
6. Raja Mohan,
Director,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
7. Mr.Sudhir Chandra,
Director,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
8. Ankur Agarwal,
Executive Director-Technical,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
9. S.Balakrishnan,
Financial Controller,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.
10. Krishnan,
Authorized Signatory,
M/s. Arvind Remedies Ltd.,
No.190, Poonamallee High Road,
Chennai - 600 084.

... Petitioners/Accused 1 to 10

.. Vs ..

Coromandel Engineering Company Limited,
Rep. by its Deputy General Manager - Accounts,
Mr.K.Ramakrishnan,
Parry House, II Floor,
43, Moore Street,
Chennai - 600 001.

... Respondent/Complainant

PRAYER: Criminal Original Petition filed under Section 482 of Cr.P.C., to call for the records relating to C.C.No.2627 of 2014 on the file of the Metropolitan Magistrate, (Fast Track Court No.IV), George Town, Chennai, and to quash the same by allowing this criminal original petition.

For Petitioners : Mr.S.Sudharshana Sundar

For Respondent : Mr.S.Thankasivan

सत्यमेव जयते
ORDER

The petitioners herein, who are accused Nos.1 to 10, have filed this criminal original petition under Section 482 of Cr.P.C., seeking to quash the proceedings in C.C.No.2627 of 2014 pending on the file of the learned Metropolitan Magistrate, (Fast Track Court No.IV), George Town, Chennai, by allowing this petition.

2. The brief facts, which are necessary for determination of the case, are as follows:-

The respondent herein/complainant is a company and it is carrying on business of Construction Activities for the past six decades. The accused have called for quotation for Construction of Manufacturing Unit-III, Ayurvedic & Utility Factory Buildings and Infrastructures Work at Plot Nos.44, 45 & 46, SIDCO Industrial Estate, Kakkalur, Thiruvallur District. The complainant company submitted its initial quotation on 12.10.2012 and the accused accepted the offer dated 28.11.2012 and issued Letter of Intent dated 28.11.2012. Under the said Letter of Intent, the total price payable by the accused to the complainant is Rs.11,45,00,000/-. The accused have issued a cheque dated 29.03.2014 bearing No.032841 for a sum of Rs.10,00,000/- drawn on Allahabad Bank, George Town Branch, Chennai - 600 001, in favour of the complainant. The accused wanted the complainant to defer the presentation of the said cheque by stating that by latest of 10.04.2014, they would pay the cheque amount by RTGS. However, the accused had not made any RTGS Transfer by 10.04.2014 as

promised by them. On 07.05.2014, the complainant presented the said cheque for encashment through their banker viz., M/s. City Union Bank, George Town Branch. However, the bankers of the accused had returned the said cheque as dishonoured with an endorsement "payment stopped by Drawer". The said dishonour was intimated to the complainant by their bankers M/s. City Union Bank on 07.05.2014.

[ii] The accused have issued the said cheque and also issued stop instruction to their Banker's with a view to cheat the complainant. After receiving the return memo, the complainant company issued a statutory notice dated 13.05.2014 through its counsel to the accused, informing them about the dishonour of the said cheque and called upon the accused to pay the cheque amount of Rs.10,00,000/- within fifteen clear days from the date of receipt of the said notice. The accused have received the statutory notice and also acknowledged receipt. However, instead of complying with the demand made therein, the accused issued a reply dated 23.05.2014, wherein, the accused claimed to have issued a message on 06.05.2014 and asked not to deposit the cheque. Such claim of the accused is nothing but an attempt to deny payment to the complainant. Having

admitted their liability and having admitted the issuance of the cheque, the accused have no reason whatsoever to withhold payment.

3. Mr.S.Sudharshana Sundar, learned counsel appearing for the petitioners would contend that statutory notice was not issued as contemplated under the provisions of the Negotiable Instruments Act and there is no specific averment in the private complaint against the other Directors as to the role played by them in the day-to-day affairs of the running of the private limited company and hence, seeks for quashment.

4. Per contra, Mr.S.Thankasivan, learned counsel appearing for the respondent would contend that for the material supplied and for the work done by the respondent, who is a private complainant, the first accused company has issued a cheque on 29.03.2014 for a sum of Rs.10 lakhs and on presentation, the same was dishonoured and it appears that the accused had issued stop instruction to the Bank with a view to cheat the complainant. After receipt of the written memo, statutory notice has been issued on 13.05.2014 and after the statutory period, the complaint has been lodged. Further, the learned counsel

appearing for the respondent has drawn the attention of this Court to para 12 of the private complaint and submitted about the respective role played by the accused Nos.2 to 10 in the private limited company viz., the first accused and prayed for dismissal of the petition.

5. This Court has considered the rival submissions made by the learned counsel on either side and perused the cheque in issue and also the statutory notice dated 13.05.2014 issued by the complainant and the reply notice dated 23.05.2014.

6. On a perusal of the statutory notice dated 13.05.2014, it is seen that the notice is in order and the next contention of the learned counsel for the petitioners is that there are no necessary averments in the complaint about the private limited company as against the other Directors of the first accused company. As rightly pointed out by the learned counsel for the respondent, at para 12 of the private complaint, it is categorically averred that the second accused is the Managing Director and Chief Executive Officer and the accused Nos.3 to 7 are the Directors of the first accused company and they are actually participated in the day-to-day affairs of the company and also

responsible for the smooth functioning of the first accused company. The letter of Intent was signed by the second accused for the supply of materials while the accused Nos.9 and 10 are the signatory to the cheque and they are responsible for the dishonour of the cheque and therefore, they are liable to be prosecuted. In view of the averments made in para 12, this Court is of the considered view that there are necessary averments made in respect of accused Nos.1, 2, 9 and 10. Insofar as accused Nos.3 to 8 are concerned, they are the Directors of the first accused company and there are no sufficient averments made as against them.

7. Considering the facts and circumstances of the case, this Court is of the view that the criminal original petition has to be allowed in part in respect of accused Nos.3, 4, 5, 6, 7 and 8 while as against accused Nos.1, 2, 9 and 10, prosecution of the private complaint has to be kept intact.

8. In the result, the Criminal Original Petition is allowed in part and the proceedings in C.C.No.2627 of 2014 pending on the file of the learned Metropolitan Magistrate, (Fast Track Court No.IV), George

Town, Chennai, stands quashed in respect of Accused Nos.3, 4, 5, 6, 7 and 8 alone. In respect of accused Nos.1, 2, 9 and 10, the Criminal Original Petition stands dismissed. The connected miscellaneous petitions are closed.

8.12.2017

Index : Yes / No
Internet : Yes
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To

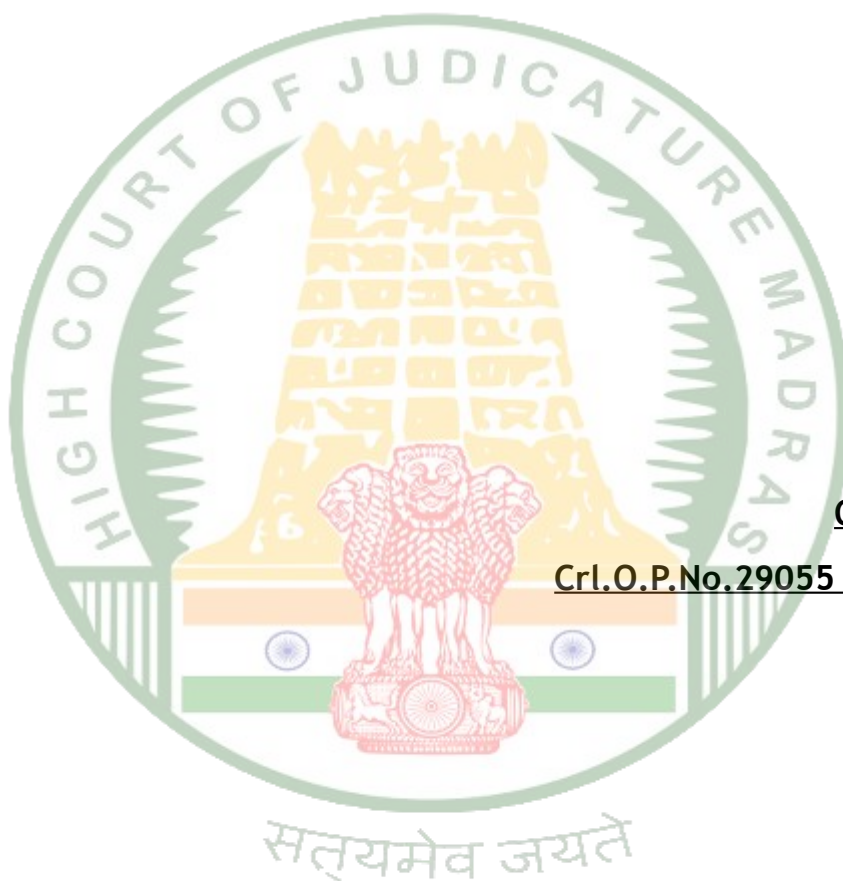
The Metropolitan Magistrate,
Fast Track Court No.IV,
George Town, Chennai.



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RMT.TEEKAA RAMAN, J.

Jrl



Order in
Crl.O.P.No.29055 of 2014

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