HON'BLE SRI JUSTICE P. KESHAVA RAO

CRIMINAL PETITION Nos.3103 and 3104 of 2011

COMMON ORDER:

Heard learned counsel for the petitioners and the respondents.

Since the subject issue, cause of action and the parties in both these criminal petitions are one and the same, with the consent of both the counsel, these petitions are being disposed of by this common order.

Originally, the 2nd respondent in both the petitions are the absolute owners and possessors of land admeasuring Ac.8.59 cents in Sy.Nos.189-5, 189-6, 190/1 and 200/16 respectively situated at S.Rangarayapuram Village, Santhakaviti Mandal, Srikakulam District. A Memorandum of Understanding (for short, "MOU"), dated 08.11.2008, was executed between the petitioners and the 2nd respondent. As per the said MOU, a sale agreement shall be entered into within 90 days from the date of receiving the mining lease and thereafter arrange for a registration within 9 to 18 months from the date of agreement of sale. The mining lease for the land shall be applied in the name of MBT Infra. As per the said MOU, the 2nd respondent/landlord has no objection for the Managing Partner of the 1st petitioner herein to proceed as accepted and agreed as above in the application of mining lease and thereafter proceed for mining in the area owned by the landlord till the sale is finally registered. Thus, from a plain reading of the said recitals it is understood that the mining operations can be started only after approval of the mining lease from the competent authority. After execution the of said MOU, an agreement of sale, dated 13.02.2009, was entered into between the 2nd respondent and the petitioners in both these petitions, whereunder an amount of Rs.20 lakhs will be paid within a period of one month by issuing cheque for Rs.5 lakhs every week. In pursuance of the above said transactions, the subject cheques have been issued by the petitioners and on presentation when the same were dishonoured with an endorsement "funds are insufficient", two private complaints have been filed by the 2nd respondent vide C.C.Nos.193 and 194 of 2009 on the file of the Judicial First Class Magistrate at Rajam. Aggrieved by the same, the present criminal petitions have been filed by the petitioners.

Learned counsel for the petitioners while making submissions brought to the notice of the Court about the recitals in MOU, dated 08.11.2008, as well as the agreement of sale, dated 13.02.2009, and contended that the contract will come into operation only after approval of the mining lease from the competent authority. As per the MOU, an agreement of sale will be entered into within 90 days from the date of receiving the mining lease and thereafter arrange for a registration within 9 to 18 months from the date of sale agreement.

The admitted fact is that the mining lease was approved only on 24.02.2009. In such a case, the cheques issued towards royalty leave alone not even the sale consideration cannot be enforced upon since the agreement of sale, dated 13.02.2009, does not contain the signatures of the petitioners, as there was a dispute with regard to the fixation of the final sale consideration. A perusal of the documents, agreement of sale and MOU filed in the material papers also prove that the agreement of sale is not signed by the petitioners. In such circumstances, the liability would arise only after the approval of the mining lease, but not prior to that. Learned counsel for the petitioners also submitted that the said cheques were presented only on 14.02.2009 taking advantage of the fact that the blank cheques were issued towards royalty when the MOU was entered into.

Per contra, learned counsel for the 2nd respondent would submit that the 2nd respondent in both the cases are the absolute owners of the subject land and in pursuance of the said MOU as well as the agreement of sale entered into between the parties, the subject cheques have been issued towards the legally enforceable debt. On presentation of the said cheques, they were returned with an endorsement "insufficient funds". In pursuance of which, a legal notice was issued. However, there was no response from the petitioners. Therefore, he submitted that an inference has to be drawn that there is a legally enforceable debt and contended that the present petitions are bereft of any material particulars and are liable to be dismissed.

A perusal of the MOU, dated 08.11.2008, as well as the agreement of sale, dated 13.02.2009, would indicate that the contractual obligations will commence only after the approval of the mining lease from the competent authority. Even as per the specific averment made in the MOU, an agreement of sale has to be entered into within 90 days from the date of receiving the mining lease and thereafter arrange for a registration within 9 to 18 months from the date of sale agreement. However, in the light of the undisputed fact that the mining lease was granted only on 24.02.2009, the question of entering into agreement of sale, dated 13.02.2009, may not arise.

Be that as it may, even a perusal of the said agreement of sale and MOU would reveal that it contains the signatures of the 2nd respondent in both the criminal petitions and conspicuously the signatures of the petitioners are not there. This fact goes to show that any agreement made and forced upon unilaterally by one party on the other, no rights would flow from the said execution. In the case on hand, since the agreement of sale and MOU does not contain the signatures of the petitioners, it cannot be said that the transaction has been materialized resulting the 2nd respondent to enforce upon those rights. Unless and until a *prima facie* case is made out with regard to drawing the statutory presumption under Section 139 of the Negotiable Instruments Act (for short, "the Act"), it cannot be said that there is a legally enforceable debt. More so, the contents of both the documents are otherwise. Further, though the statutory presumption under Section 139 of the Act is rebuttable, initially the said presumption has to be established by placing *prima facie* material on record. In the absence of the same, it cannot be said that since the said presumption is rebuttable, it is for the petitioners to prove during the course of the trial.

Therefore, this Court feels that there is substance in the arguments advanced by the counsel for the petitioners that there is no legally enforceable debt and no *prima facie* case to draw the statutory presumption under Section 139 of the Act. Therefore, continuation of the proceedings would amount to abuse of the process of the Court and putting the petitioners to mental agony and harassment.

Accordingly, the criminal petitions are allowed quashing the proceedings initiated against the petitioners in C.C.Nos.193 and 194 of 2009 on the file of the Judicial First Class Magistrate at Rajam.

Miscellaneous petitions, if any, shall stand closed.

JUSTICE P. KESHAVA RAO

Date: 18.12.2017.
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