

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-1412-2017 (O&M)

Date of decision: July 5, 2017.

M/s Best Deal Housing and Construction Pvt. Ltd.

... **Petitioner**

v.

M/s JMK Land Solution Pvt. Ltd. & another

... **Respondents**

CORAM: **HON'BLE MR. JUSTICE A.B. CHAUDHARI**

Present: Shri Naresh Kaushik, Advocate for the petitioner.

Shri Malkit Singh Jandiala, Advocate for the respondents.

A.B. Chaudhari, J.

By the present petition, the original complainant has put to challenge the order dated 14.12.2016 (Annexure P-7) in complaint case No.3070/15 dated 18.11.2015 instituted on 18.11.2015 by which the learned trial court rejected the application for amendment of the complaint filed by the present petitioner-complainant.

The petitioner M/s Best Deal Housing & Construction Pvt. Ltd. through authorized representative Rakesh Choudhary had filed a complaint under Section 138 of the Negotiable Instruments Act (NI Act) against the respondents in the court of JMJC, Karnal and the name of the complainant in the array of complainant is M/s Best Deal Housing & Construction Pvt. Ltd. In the said case, the petitioner filed an application for amendment of the complaint almost after the evidence of the complainant was recorded.

The petitioner stated in the application for amendment that qua the aforesaid

complaint and the cheque concerned, the authorized signatory had issued a legal notice dated 6.4.2015 to the respondent-accused in the matter of dishonouring of the cheque for M/s Best Deal Infrastructure Limited. M/s Best Deal Housing & Construction Pvt. Ltd. is the sister concern of M/s Best Deal Infrastructure Limited. M/s Best Deal Housing & Construction Pvt. Ltd. had also filed two complaints against M/s Ria Construction Limited and another on the same day i.e. 24.4.2015, i.e., the day on which M/s Best Deal Infrastructure Limited had filed the other complaint. The amendment application further states that the aforesaid complaint suffers from inadvertent mistake, namely, that the title or array of the complainant ought to have been described as M/s Best Deal Infrastructure Limited instead of M/s Best Deal Housing & Construction Pvt. Ltd. The error occurred because for both the firms, the complaints were filed on the same day and by the same counsel who obviously made the mistake. In support of this averment in the application, it was stated that as a matter of fact, legal notice dated 6.4.2015 referred to in the above complaint was in fact issued on behalf of M/s Best Deal Infrastructure Limited and not in the name of M/s Best Deal Housing & Construction Pvt. Ltd. firm. The aforesaid plea was also supported by the averments regarding the authorization etc.

The said application for amendment was replied by the respondents by Annexure P-6. The applicant objected on the ground that there is no provision in the NI Act or Cr.P.C. for making amendment of complaint. The complainant was cross examined on 12.7.2016 and suggestions were also given to him and had enough opportunity at that time

to come out with such a plea but that was not done. The application was filed only with a view to fill up lacuna and therefore, was liable to be rejected.

The learned trial court rejected the application by the impugned order on the ground that there is no such provision in the Cr.P.C. or NI Act. However, the said reason is clearly illegal as the law is well settled that there is no bar from allowing the amendment even in a criminal complaint. Secondly, the complaint under Section 138 NI Act is not strictly a criminal case but NI Act was brought into force for making the commercial and business transactions easy. The proceedings are therefore in the nature of quasi criminal proceedings.

The learned trial court then stated that the entire nature of complaint including cause of action would be altered. That is also wrong because legal notice dated 6.4.2015 was issued by M/s Best Deal Infrastructure Limited and not by M/s Best Deal Housing & Construction Pvt. Ltd. and, therefore, it is wrong to say that it will change the nature of the complaint or cause of action.

The next reason given by the learned trial court is that there are two different companies and that M/s Best Deal Housing & Construction Pvt. Ltd., which was complainant before the court, had never sent any mandatory notice under Section 138 of the NI Act to the accused persons. In fact, that is the reason that the amendment was sought because notice dated 6.4.2015 was given by M/s Best Deal Infrastructure Limited but while filing the complaint, there was an inadvertent mistake in describing the name of the complainant company.

Looking to the above factual background, in my opinion and in particular because notice dated 6.4.2015 was issued by M/s Best Deal Infrastructure Limited and not by M/s Best Deal Housing & Construction Pvt. Ltd., which was wrongly described in the array of the complainant, instead of M/s Best Deal Infrastructure Limited, the mistake was inadvertent and bona fide. It is well settled legal position that for such a fault on the part of the petitioner-complainant, the technicalities cannot prevail as ultimate aim is to do justice. It is seen from the record that the cheque in question was of huge amount of Rs.51 lacs. But then, accused persons cannot be allowed to take advantage of the mistake committed in describing the title of the complaint. The objection that the complainant was cross examined and the complainant's evidence was closed, undoubtedly show reckless and negligence approach on the part of the petitioner complainant in not over-seeing as to what its Advocate was doing as the complainant has to take care of his matter himself as in the instant case the Advocate clearly lacked vigilance which is the *sine qua non* for the legal profession. But then, the petitioner cannot be allowed to suffer because of mistake of the lawyer. However, the petitioner cannot be allowed to go scot free having utilized the process of the court and delayed the proceedings by his own conduct. In my opinion, a suitable amount of cost of Rs.50,000/- payable by the petitioner by depositing the same in the court payable to the State of Haryana would sub-serve the interest of justice since the petitioner has utilized the services of the State of Haryana. Liberty will also have to be reserved in favour of the respondents to apply, if so advised, for making consequential amendment. In the result, I make the following order:-

ORDER

- (i) CRM-M-1412-2017 is allowed;
- (ii) Application for amendment of the complaint (Annexure P-5) is allowed;
- (iii) The name/title/description of the complainant in the complaint case No.3070/15 instituted on 18.11.2015 is allowed to be substituted as M/s Best Deal Infrastructure Limited subject to payment of costs of Rs.50,000/- with the court payable to the State of Haryana as a pre-condition.

July 5, 2017.

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[A.B. Chaudhari]
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No