IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

(1) CRM No.M-15651 of 2017 (O&M)

Sajith Kumar M.S.

...Petitioner

VERSUS

India Bulls Housing Finance Ltd.

...Respondent

(2) CRM No.M-15817 of 2017 (O&M)

Jayalekshmi

...Petitioner

VERSUS

India Bulls Housing Finance Ltd.

...Respondent

(3) CRM No.M-15818 of 2017 (O&M)

Hardi Trebers and others

...Petitioners

VERSUS

India Bulls Housing Finance Ltd.

...Respondent

Date of Decision: May 09, 2017

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Vikram Bali, Advocate
for the petitioners.

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<u>INDERJIT SINGH, J.</u>

This order shall dispose of all the above-mentioned connected cases as the point for determination in all these cases is the same.

The above-mentioned petitions have been filed by petitioners under Section 482 Cr.P.C. for quashing of complaints; CC No.2831 of 2016 dated 29.02.2016, CC No.9283 of 2016 dated 03.08.2016 and CC No.1255 of 2016 dated 07.02.2015, filed by the respondent under Sections 138 and 142 of the Negotiable Instruments Act.

Learned counsel for the petitioners argued that petitioners entered into agreement of loan with the respondent for ₹40,34,742/- and at that time, 120 security cheques were taken by the respondent and also got mortgaged property etc. He further argued that those cheques which were given as security, have been misused by the respondent, therefore, the complaints in question, are liable to be quashed.

I have heard learned counsel for the petitioner and have gone through the record.

Learned counsel for the petitioner has brought loan agreement to the notice of this Court. The perusal of the loan agreement nowhere shows that cheques in question have been taken by the respondent as security cheques. There is nothing like this in the agreement. Learned counsel for the petitioner further brought clause 2.5 (a) (VII) of the agreement to the notice of this Court, in which it is agreed that the borrower/s shall execute and/or deliver such documents, security documents, agreements, guarantees, indemnities, Demand Promissory Notes, Declarations etc. as IFSL may in its sole and absolute discretion may require. From this clause in the loan agreement, it cannot be held that 120 cheques have been given by the petitioners as security. Otherwise also, it is finding of fact whether the respondent has taken blank signed cheques as security or post-dated cheques for payment of loan installments in case of default as security and this fact is to be decided by the trial Court on the basis of the evidence produced before it. The finding of fact cannot be given at this stage by this Court without any evidence.

Learned counsel for the petitioner argued that there is arbitration clause in the agreement, therefore, these complaints are not maintainable. This argument has also no force. When the cheques have been dishonoured and returned back unpaid by the Bank and legal notices have been sent, then non-payment of the amount within prescribed period gave cause of action to file the complaints under Section 138 of the Negotiable Instruments Act.

In view of the above discussion, I find that no ground is made out for quashing the complaints. In no way, it can be held that the filing of the complaints amount to abuse of process of law or miscarriage of justice.

Therefore, finding no merit in all the petitions, the same are dismissed.

May 09, 2017 **(INDERJIT SINGH)**
Vgulati **JUDGE**

Whether speaking/reasoned **Yes**
Whether reportable **No**