

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**CRM-M-24248-2017 (O&M)
DATE OF DECISION:12.07.2017**

SIMMI MITTAL

... Petitioner

V.

CHOLAMANDLAM INVESTMENT & FINANCE CO. LTD.

... Respondent

CORAM: HON'BLE MR. JUSTICE ANUPINDER SINGH GREWAL

Present: Mr. Suveer Sheokand, Advocate
for the petitioner.

ANUPINDER SINGH GREWAL, J. (ORAL)

The petitioner has challenged the complaint under Section 138 of Negotiable Instruments Act (N.I. Act) dated 06.06.2016 as well as the summoning order dated 09.06.2016.

The petitioner has been summoned on the complaint of the respondent that it had advanced loan in terms of the agreement No.XOHELIN-1463674. In discharge of his liability for loan obtained under the agreement, the petitioner issued cheque No.38662 dated 22.04.2016 of Allahabad Bank, Chaura Bazaar, Ludhiana for a sum of Rs.50 lacs. This cheque was presented by the complainant for encashment and was returned because of insufficient funds. The complainant had issued notice on 04.05.2016 calling upon the petitioner to make the payment. The notice is stated to be duly served but the petitioner did not make the payment in terms thereof.

Learned counsel for the petitioner has contended that loan of Rs.1.5 crores had been obtained by the petitioner for renovating his house and he was duly repaying the same through monthly installments of over Rs.1 lac per month. This amount of Rs.50 lacs was never due at the time it was presented by the complainant to the Bank and therefore, the complaint would not be maintainable. He states that the cheque had been issued blank towards security in terms of the agreement.

However, the learned counsel has not been able to point out any document which states that the amount of Rs.50 lacs was not to be presented by the petitioner at the time when it was presented or it had to be presented subject to some conditions at a later date.

In any event, these are issues which would be decided in the trial after recording evidence of the parties. Such disputed questions of fact cannot be decided by this Court while exercising jurisdiction under Section 482 of the Cr.P.C. The summoning order has been passed after duly considering the complaint, affidavit of the complainant as well as the documents produced by him. After recording the preliminary evidence, the trial Court has come to the conclusion that prima facie case is made out against the petitioner for commission of offence under Section 138 of the N.I. Act. I do not find any illegality in the order of the trial Court.

For these reasons, the petition stands dismissed.

July 12, 2017

SwarnjitS

**(ANUPINDER SINGH GREWAL)
JUDGE**

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No