

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

CRM No.M-2931 of 2011 (O&M)

Date of Decision: July 28, 2017

ICICI Bank Limited and another

...Petitioners

VERSUS

Little World Construction Pvt. Ltd. and others

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Puri, Advocate
for the petitioners.

Mr.G.S.Sandhu, Advocate
for respondent No.1.

None for respondents No.2 to 4.

Respondent No.5-Given up.

INDERJIT SINGH, J.

Petitioners ICICI Bank Limited and Vincent Pailey, Manager have filed this petition under Section 482 Cr.P.C. against respondents Little World Construction Pvt. Ltd. M/s Excelsor Consultancy & Investment Limited, Mr.K.M.Sudhir Shankar and Mr.O.P.Balaji for quashing the summoning order dated 10.11.2010 in complaint No.59/10 dated 16.10.2010 titled as 'Little World Construction Pvt. Ltd. vs. M/s Excelsior Consultancy and Investment Ltd.' and all subsequent proceedings arising therefrom.

Notice of motion was issued. Learned counsel for respondent

No.1 appeared and contested the petition. None appeared on behalf of respondents No.2 to 4 despite service. Respondent No.5 already given up.

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

From the record, I find that Little World Construction Pvt. Ltd. filed a complaint against M/s Excelsor Consultancy & Investment Limited and other accused under Sections 406, 420, 467, 468, 471 and 120-B IPC. As per allegations in the complaint, the petitioner-bank issued confirmation letter on 09.12.2009 and confirmed and undertook that their customer accused-respondent No.5 issued a cheque amounting to ₹50 lakhs in favour of the complainant-company. Accused No.3-petitioner confirmed and undertook to honour the same cheque on the date mentioned irrevocably and unconditionally without any protest upon presentation to their bank branch by the bearer or the holder. Further, the accused confirmed that their understanding will remain in force till the realization of the above cheque and cannot be revoked under any circumstances. The accused bank confirmed that they shall not honour any instructions of their client M/s Cosmic Systems to 'Stop Payment' or Cancellation of above-mentioned cheque.

I have gone through the record. From the record, I find that the only allegation against the present petitioners is qua undertaking given by the bank. There is no allegation against the bank that the bank has forged any document or any forged document has been used. No money is entrusted to the bank nor it is the case of the complainant that any amount was given by the complainant to the bank on the inducement of the bank. There is also

nothing on the record to show any misappropriation of the complainant's

money by the bank nor there is any wrongful gain by the bank of any type from the transaction. There is also no direct evidence on record to show any conspiracy also. The undertaking given by the bank as per Annexure P-5 is as under:-

“We, ICICI Bank, 39, Nelson Manickam Road, Aminjikari, Chennai-600029, do hereby confirm with full bank responsibility that our Customer, M/s COSMIC SYSTEMS, having account No:027605003844, and having office at No:2, Pillaiyar koil street, Triplicane, Chennai, is maintaining a Current account with our bank since May, 2003.

We are issuing an undertaking along with out customer cheque no:466315 dated 15th March 2010, issued in your favour for a value of Rs.50,00,000/- (Rupees Fifty lakhs only).

We hereby confirm that we shall honour the cheque on the date mentioned irrevocably and unconditionally without any protest upon presentation to our bank branch by the Bearer of the Holder.

Also, we also confirm that our undertaking will remain in force till the realization of the above cheque and cannot be revoked under any circumstances.

We also confirm that we shall not honour any instructions of our Client, M/s COSMIC SYSTEMS to “Stop Payment” or cancellation of the above mentioned cheque.

We further certify that Mr.K.M.Sudhir Shankar is the Authorised Signatory on the account as per our records.”

The perusal of this undertaking shows that it is not a bank guarantee. Even if it is taken that bank has given guarantee for the amount of ₹50 lakhs to the complainant, even then, the remedy lies before the civil Court. There is no evidence showing criminal intention of the bank. Further, the undertaking was that the cheque in question will not be dishonoured on any protest upon presentation to their bank by the bearer of the holder or even if the payment was requested to be stopped. But in the

present case, the accused has closed the account with the bank, therefore, the cheque could not be honoured. There is no objection by the bank of any type for not honouring the cheque nor the bank has relied upon any objection of any party for honouring the cheque. As already discussed, even if it is taken that that there is breach of terms of the undertaking, even then, it is a matter of civil dispute and the filing of the complaint against the present petitioners is nothing but abuse of process of law.

Therefore, finding merit in the present petition, the same is allowed. The summoning order dated 10.11.2010 passed in complaint No.59/10 dated 16.10.2010 titled as 'Little World Construction Pvt. Ltd. vs. M/s Excelsior Consultancy and Investment Ltd.' and all subsequent proceedings arising therefrom are hereby quashed qua the petitioners.

July 28, 2017
Vgulati

(INDERJIT SINGH)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
No