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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 179/2015

UNIVESAL FINANCERS

..... Petitioner

Through: Mr. Sharad Bansal, Advocate

versus

PUSHPA GUPTA

..... Respondent

Through: Mr. Rajiv Raheja, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

19.01.2017

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The petitioner has preferred the present leave petition to seek leave to appeal against the judgment dated 29.01.2015 passed by the learned Metropolitan Magistrate (NI Act-02), Dwarka Courts, New Delhi, in CC No. 4661/14 whereby the petitioner's complaint under Section 138 of the Negotiable Instrument Act has been rejected and the respondent/accused acquitted.

The case of the petitioner/complainant was that the petitioner had advanced a loan to the respondent/accused amounting to Rs. 9 lakhs. The said loan had not been repaid. Consequently, the petitioner had initiated arbitration and an arbitral award had been rendered in favour of the petitioner by the learned Arbitrator. The petitioner had preferred an

execution proceedings in respect of the said award and during its pendency, the accused had issued the cheque for Rs. 9 lakhs in settlement of the liability owed by the respondent to the petitioner. The respondent/accused, on the other hand, took the defence that the cheque in question had been issued at the time of obtaining loan of Rs. 3 lakhs in the year 2002. The respondent disputed that a settlement had taken place with the petitioner under which the cheque in question has been issued in blank. She further stated that the petitioner had misused the blank cheque taken from her in the year 2002.

The trial court has held that, according to the accused, the loan had been repaid. The petitioner had not established before the trial court as to how the liability had been assessed as Rs. 9 lakhs. Consequently, the trial court held that the defence of the accused was probablized that the cheque had not been issued in respect of an outstanding loan and thus, the accused was acquitted.

The submission of learned counsel for the petitioner is that the petitioner had filed an affidavit by way of evidence and had annexed the award which had been rendered by the Arbitrator as Annexure 'A' to the said affidavit. He submits that the trial court has ignored the said award and the fact that the liability of Rs. 9 lakhs has been worked out on the basis of the award itself.

A perusal of the additional affidavit Ex.I/I shows that merely a copy of the award dated 23.07.2011 has been filed as mark 'A'. The signed copy of the award was not filed and the same has not been duly proved in accordance with law. Thus, the omission of the trial court, in not taking note of the arbitral award is justified. Learned counsel for the petitioner has also

argued that in her defence discussed at the stage of framing of issues, the accused had, inter alia, stated that she had made payment of Rs. 9 lakhs to the complainant, however, the complainant had not returned the cheque to her. Learned counsel submits that the liability of Rs. 9 lakhs had thus been admitted by the accused. In my view, the said statement in defence does not tantamount to admission by the accused. Since the petitioner had preferred the complaint, it was for the petitioner to establish the fact that the cheque had been drawn in respect of an outstanding liability. Moreover, it also emerged on record that the earlier drawn blank cheque itself may have been used by the petitioner subsequently.

The petitioner has also filed a rejoinder, according to which, the objections preferred by the respondent/accused under Section 34 of the Arbitration and Conciliation Act to the arbitral award have been dismissed.

In view of the aforesaid, I do not find any merit in the present petition. The impugned judgment does not call for any interference.

The petition is dismissed.

VIPIN SANGHI, J

JANUARY 19, 2017

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