

\$~17

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

+ CRL.M.C. 2395/2016 & CrI.M.A. 10208/2016 (stay)

PAWAN KUMAR VARMA

..... Petitioner

Represented by: Mr. Punit K. Bhalla, Adv.

versus

SANDEEP DHALL

..... Respondent

Represented by:

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

18.04.2017

%

1. Respondent filed a complaint under Section 138 of the Negotiable Instruments Act against M/s. Value Infrabuild India Pvt. Ltd. (in short the company) and its directors alleging that accused Nos. 2 to 6 of which petitioner was accused No.3 were the Directors/ Principal Officers of the company and responsible for the day-to-day functioning and business transactions of the company. It was alleged by the respondent that the company, its officials and directors enticed the complainant to purchase three units of flats for a total amount of ₹65,00,000/- which amount was paid by the complainant through cheques and an agreement dated 30th September, 2014 entered into this regard. Since the project was getting delayed the company through its Directors sent a letter to the complainant to buy back

CRL.M.C. 2395/2016

page 1 of 3

and re-purchase the aforementioned units of flats for ₹88,40,000/- included incremental return of ₹23,40,000/-. For the purpose of payment of incremental income, the accused issued two cheques of ₹11,70,000/- each in favour of the complainant and one cheque towards principal amount. When the cheque dated 4th April, 2015 for a sum of ₹11,70,000/- was presented, the same was returned unpaid with the remarks “payment stopped”. Pursuant to a legal demand notice when the amount was not paid the complaint was filed. The petitioner who was arrayed as accused No.3 in the complaint case No.1751/15 was summoned vide order dated 27th June, 2015. The petitioners filed an application for exemption and also an affidavit stating that he was not the signatory to the cheque and had resigned from the company, however, vide order dated 2nd July, 2016, the learned Trial Court did not take the affidavit on record noting that no such procedure was permissible under Section 165 of the Evidence Act. .

2. The short issue raised by the petitioner in the present petition is that he had already resigned as a Director from the company on 15th September, 2014 and hence he could not be made liable for the conduct of the company in not honouring the cheque post his resignation from the company. In support of his contention copies of Form DIR-12 and Form-32 filed with the Registrar of Companies have been placed on record. A notice of the present petition was issued to the complainant which has already been served. However despite service of notice none has appeared on behalf of the respondent.

3. In view of the impeccable nature of documents placed on record showing that the petitioner resigned from the company with effect from 15th

September, 2014 and the cheque in question was dated 4th April, 2015, the petitioner could not have been summoned for the alleged offence. Consequently, the complaint case qua the petitioner and the order dated 27th June, 2015 to the extent of summoning the petitioner are set aside.

4. Petition and application are disposed of.

MUKTA GUPTA, J.

APRIL 18, 2017
‘ga’