

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

% Judgment reserved on: 15th December, 2016
Judgment pronounced on: 6th January, 2017

+ CRL.M.C. 2321/2016 & Crl.M.A. 9712/2016

RENAISSANCE FURNITURE PVT. LTD. Petitioner
Represented by: Mr. P.K. Dubey, Mr. Arjun
Mahajan, Mr. Puneet Relan,
Mr.Mridul Yadav, Advs.
versus

GEMINI REALTECH PVT. LTD. & ANR Respondents
Represented by: Mr. Rakesh Kumar Singh, Mr.
Deepak Panwar, Advs.

+ CRL.M.C. 2324/2016 & Crl.M.A. 9725/2016

RENAISSANCE FURNITURE PVT. LTD. Petitioner
Represented by: Mr. P.K. Dubey, Mr. Arjun
Mahajan, Mr. Puneet Relan,
Mr.Mridul Yadav, Advs.
versus

GEMINI REALTECH PVT. LTD. & ANR Respondents
Represented by: Mr. Rakesh Kumar Singh, Mr.
Deepak Panwar, Advs.

+ CRL.M.C. 2325/2016 & Crl.M.A. 9727/2016

RENAISSANCE FURNITURE PVT. LTD. Petitioner
Represented by: Mr. P.K. Dubey, Mr. Arjun
Mahajan, Mr. Puneet Relan,
Mr.Mridul Yadav, Advs.
versus

GEMINI REALTECH PVT. LTD. & ANR Respondents
Represented by: Mr. Rakesh Kumar Singh, Mr.
Deepak Panwar, Advs.

+ CRL.M.C. 2652/2016 & CrI.M.A. 11357/2016

RENAISSANCE FURNITURE PVT LTD Petitioner
Represented by: Mr. P.K. Dubey, Mr. Arjun
Mahajan, Mr. Puneet Relan,
Mr.Mridul Yadav, Advs.
versus

GEMINI REALTECH PVT LTD & ANR Respondents
Represented by: Mr. Rakesh Kumar Singh, Mr.
Deepak Panwar, Advs.

+ CRL.M.C. 2653/2016 & CrI.M.A. 11359/2016

RENAISSANCE FURNITURE PVT LTD Petitioner
Represented by: Mr. P.K. Dubey, Mr. Arjun
Mahajan, Mr. Puneet Relan,
Mr.Mridul Yadav, Advs.
versus

GEMINI REALTECH PVT LTD & ANR Respondents
Represented by: Mr. Rakesh Kumar Singh, Mr.
Deepak Panwar, Advs.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

1. Five complaints were filed by the respondents under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act') wherein the petitioner was also summoned as an accused. On the plea that the basis of all the five complaints was the same outstanding liability pursuant to a single transaction for which seven cheques were issued which bounced, the petitioner sought clubbing of the five complaints titled as *Gemini Realtech Pvt. Ltd. & Anr. Vs. Renaissance Furniture Pvt. Ltd.(A-1)* vide applications dated 5th February, 2016 which applications were dismissed by the learned

Trial Court vide the impugned order dated 15th March, 2016. Hence the present petitions.

2. Relevant portion of the order of the learned Metropolitan Magistrate dismissing the applications is as under:-

“5. *I have heard the arguments of both the sides and also gone through the record carefully. It must be noted here that the cheques in question, dates of their issuance, amounts of the cheques in question, return memos as well as dates of statutory legal notices and amounts claimed therein in these five matters are different. Ld. Counsel for the accused/applicant has argued that if all these five matters are clubbed together, then considerable time and effort will be saved. However, I do not find myself to be in agreement with this argument. Since the particulars of the cheque in question, return memos as well as statutory legal notice involved in this case are different from particulars of the cheques in question, return memos as well as statutory legal notice involved in the other four matters, I am of the opinion that clubbing these five matters together will result in added confusion. It is also settled principle of law that dishonour of each cheque and subsequent non payment of the cheque amount by the accused within the prescribed period even after receipt of statutory legal notice constitutes a separate cause of action. Since the cheques in question involved in this case and in the other four matters were issued on different dates and for different amounts and statutory notices u/s 138 NI Act were also sent separately to the accused, no useful purpose would be served by clubbing all the five matters together. I also place reliance upon the case of “Rajendra Chaudhary Vs. State of Maharashtra” 2007 Cr LJ 844 in this regard wherein it has been held by the Hon’ble High Court of Bombay that “each tender of a cheque and its dishonour gives rise to separate cause of action subject to a condition that separate notices are issued in respect of each of these cheques.... However, in a case where*

cheques were issued on different dates, presented on different dates and separate notices are issued in respect of each default, the transaction cannot be held to be a single transaction attracting provisions of Section 219 of the Code.”

3. Before this Court, learned counsel for the petitioner contends that the impugned order has been passed in violation of Sections 219, 220 and 223 Cr.P.C. which provides that when offences are committed in the course of same transaction or are so connected to form one or same transaction they should be tried together at one trial. It is submitted that clubbing of the complaints would facilitate the speedy trial which is the mandate of NI Act besides Articles 13A, 21 and 14 of the Constitution of India. The finding of the learned Trial Court that the cheques in question, dates of their issuance, amounts of cheques in question, return memos, statutory legal notices and amounts claimed being different, clubbing of the five matters would result in confusion is erroneous and illegal. Reliance is placed on the decisions of this Court reported as 2003 SCC OnLine Del 323 Gulshan Kumar Ahuja Vs. Veena Sharma, 2010 SCC OnLine Del 1876 Morgan Tectronics Ltd. & Ors. Vs. State & Ors., 2011 SCC OnLine Del 3112 M/s Indian Sulphacid Industries Ltd. Vs. M/s Emmsons International Ltd. and 2015 SCC OnLine Del 11862 Rajnish B. Bhatia Vs. CBI & Ors.

4. Per contra, learned counsel for the respondents contends that the power under Section 482 Cr.P.C. should be used sparingly and there being no illegality/perversity in the impugned order, this Court will refrain from interfering with the same. Reliance is placed on the decision of the Supreme Court reported as 2011 CrI.L.J. 89 State of Maharashtra & Ors. Vs. Arun Gulab Gawali & Ors.. It is further contended that the principles laid down in

Sections 219, 220 and 223 Cr.P.C. are not applicable to the facts of the present case as dishonour of each cheque is a separate cause of action and hence the five complaints cannot be amalgamated. Reliance is placed on decisions of Supreme Court reported as 2003 Cr.L.J. 4452 Lalu Prasad alias Lalul Prasad Yadav Vs. State through CBI(A.H.D.) Ranchi and 2007 Cr.L.J. 844 Rajendra B. Choudhari Vs. State of Maharashtra & Anr.. Even otherwise, there were seven cheques dishonoured and the respondents/complainants have already filed two complaints for two cheques wherein the dates of the cheques were same. Learned counsel for the respondents further submits that the applications filed by the petitioner were yet another dilatory tactic. Till date more than 30 dates have been given on the asking of the petitioner for which twice costs has also been imposed on it. Thus, to say that clubbing of the five complaints would speed up the trial ensuring the constitutional right of the accused is only a farce.

5. This Court in Rajesh B. Bhatia (supra) held as under:-

“15. Section 218 of Cr.P.C. provides that for every distinct offence, there would be a separate charge and every such charge shall be tried separately unless the accused persons, by an application in writing so desire and the Magistrate is of the opinion that such person is not likely to be prejudiced thereby, and in that event, the Magistrate may try together all or any number of charges framed against such persons.

16. To such rule of separate charge and a separate trial for each distinct offence, certain exceptions have been laid down in Sections 219 to 223 of the Cr.P.C. and which exceptions are based on rational principles. In Section 219 of the Cr.P.C., joint trial for offences of the same kind not exceeding three in number and committed within a period of 12 months is permitted for avoidance of multiplicity of proceedings. Section 220 of the Cr.P.C. permits of one trial even if many offences are committed, if such offences form part of the same transaction; the rationale

for such an exception being that in such circumstances, separate trials may lead to conflicting judgments. In case of any doubt about what offence has been committed, Section 221 of the Cr.P.C. permits of framing of any number of charges which could be tried together, provided the offences are connected and the accused could also be convicted for an offence with which he is not expressly charged but might have been charged. Section 223 of the Cr.P.C. permits of a joint trial of several persons in specified cases, where various offences committed by them are connected with each other.”

6. Sections 219, 220 and 223 of Cr.P.C. read as under-

“Section 219. Three offences of same kind within year may be charged together.- (1) *When a person is accused of more offences than one of the same kind committed within the space of twelve months from the first to the last of such offences, whether in respect of the same person or not, he may be charged with, and tried at one trial for, any number of them not exceeding three.*

(2) *Offences are of the same kind when they are punishable with the same amount of punishment under the same section of the Indian Penal Code (45 of 1860) or of any special or local law:*

Provided that, for the purposes of this section, an offence punishable under section 379 of the Indian Penal Code (45 of 1860) shall be deemed to be an offence of the same kind as an offence punishable under section 380 of the said Code, and that an offence punishable under any section of the said Code, or of any special or local law, shall be deemed to be an offence of the same kind as an attempt to commit such offence, when such an attempt is an offence.

220. Trial for more than one offence.- (1) *If, in one series of acts so connected together as to form the same transaction, more offences than one are committed by the same person, he may be charged with, and tried at one trial for, every such offence.*

(2) *When a person charged with one or more offences of criminal breach of trust or dishonest misappropriation of property as provided in sub-section (2) of section 212 or in sub-section (1) of*

section 219, is accused of committing, for the purpose of facilitating or concealing the commission of that offence or those offences, one or more offences of falsification of accounts, he may be charged with, and tried at one trial for, every such offence.

(3) If the acts alleged constitute an offence falling within two or more separate definitions of any law in force for the time being by which offences are defined or punished, the person accused of them may be charged with, and tried at one trial for, each of such offences.

(4) If several acts, of which one or more than one would by itself or themselves constitute an offence, constitute when combined a different offence, the person accused of them may be charged with, and tried at one trial for the offence constituted by such acts when combined, and for any offence constituted by any one, or more, of such acts.

(5) Nothing contained in this section shall affect section 71 of the Indian Penal Code (45 of 1860).

Section 223. What persons may be charged jointly.-*The following persons may be charged and tried together, namely:-*

(a) persons accused of the same offence committed in the course of the same transaction;

(b) person accused of an offence and persons accused of abetment of, or attempt to commit, such offence;

(c) person accused of more than one offence of the same kind, within the meaning of section 219 committed by them jointly within the period of twelve months;

(d) persons accused of different offences committed in the course of the same transaction;

(e) persons accused of an offence which includes theft, extortion, cheating, or criminal misappropriation, and persons accused of receiving or retaining, or assisting in the disposal or concealment of, property possession of which is alleged to have been transferred by any such offence committed by the first named

persons, or of abetment of or attempting to commit any such last-named offence;

(f) persons accused of offences under sections 411 and 414 of the Indian Penal Code (45 of 1860) or either of those sections in respect of stolen property the possession of which has been transferred by one offence;

(g) persons accused of any offence under Chapter XII of the Indian Penal Code (45 of 1860) relating to counterfeit coin and persons accused of any other offence under the said Chapter relating to the same coin, or of abetment of or attempting to commit any such offence; and the provisions contained in the former part of this Chapter shall, so far as may be, apply to all such charges:

Provided that where a number of persons are charged with separate offences and such persons do not fall within any of the categories specified in this section, the 1[Magistrate or Court of Session] may, if such persons by an application in writing, so desire, and 2[if he or it is satisfied] that such persons would not be prejudicially affected thereby, and it is expedient so to do, try all such persons together.”

7. It is trite law that dishonour of each cheque constitutes a separate offence giving rise to a separate cause of action. Sections 219 and 223 Cr.P.C. are exceptions to the general rule that there should be separate charge and separate trial for each distinct offence. Provisions from Sections 219 and 223 (d) of the Cr.P.C. are discretionary in nature and the prime purpose is that by charging and trying together, there is no prejudice to any of the parties and the joint trial is in expediency of the matter.

8. In the decision Rajnish B. Bhatia (supra) this Court upheld the order of the learned Trial Court wherein the prosecution made request that since the witnesses in the two trials were common, it was expedient to try both the cases together as larger conspiracy was involved. Even in Morgan

Tectronics Ltd. (supra) relied upon by learned counsel for the petitioner, this Court clubbed only two complaints where the complainants were common and refused to club the complaints of different complainants together. Even in Gulshan Ahuja (supra) only two complaints of the same year were clubbed together.

9. Admittedly, in two of the above noted complaints, offences in relation to dishonour of two cheques of the same date have already been clubbed together. Even as per Section 219 Cr.PC, only three offences of the same kind within one year may be charged together. Thus, even if this court directs clubbing of the complaints together, there being seven cheques which got dishonoured, the petitioner will still have to face trials in three complaint cases as against five complaint cases. However, to seek this relief the petitioner ought to have approached the court in the first instance itself and not at a belated stage. The complaints were filed on 3rd January 2014 whereafter the petitioner was summoned and it entered appearance. However, the applications seeking clubbing of the complaints were filed only on 5th February 2016 after the right of the petitioner to cross examine was closed.

10. Even though the contention of the petitioner is that the purpose of joint trial is to expedite the same however as noted above the right of the petitioner to cross-examine the witnesses had already been closed which was recalled and last opportunity granted. Hence at this stage, it is evidence that the application moved for clubbing the five complaints is not in expediency of a speedy trial but to further delay the trial.

11. Finding no illegality in the order impugned warranting interference; this court is not required to exercise its discretionary remedy under Section 482 CPC. Petitions and applications are accordingly dismissed.

(MUKTA GUPTA)
JUDGE

JANUARY 06, 2017
‘v mittal’

