

IN THE HIGH COURT OF BOMBAY AT GOA**CRIMINAL WRIT PETITION NO. 83 OF 2018**

Pyramid Finance Private Limited,
A company incorporated under the
Companies Act, 1956, having its
Registered Office at Salgaocar House,
Off. Francisco Luis Gomes Road,
Vasco-da-Gama, Goa-403 802 and
Corporate Office at third floor,
Salgaoncar Centre, Rua de Ourem,
Panaji Goa -403 001.

Represented by its duly constituted
attorney, Ms. Leena M. Hede

.... Petitioner

V e r s u s

1. M/s. Ambaal Holdings,
B-80, Deyavasandra Industrial Estate,
White Field Road,
Mahadevapura P.O.
Bangalore- 560 048.

2. Mr. Sandeep Agarwal,
B-80, Deyavasandra Industrial Estate,
White Field Road,
Mahadevapura P.O.,
Bangalore- 560 048.
Residing at:
Flat No.106 Salarpuria Cambridge Residency,
Ulsoor, Bangalore.

..... Respondents.

Adv. Nigel Da Costa Frias for the Petitioner.

Adv. Vivek Angelo Rodrigues for Respondents no. 1 & 2.

Coram:- C. V. BHADANG, J.

Date:- 4th July 2018.

Oral Order:

Heard Shri Costa Frias, the learned counsel for the petitioner and Shri Rodrigues, the learned counsel appearing of the respondents.

2. This petition can be disposed of on a short count. The petitioner is the complainant in a complaint under section 138 of the Negotiable Instruments Act filed against the respondent which is pending before the Judicial Magistrate First Class, at Panaji being OA/317/2011/D. The complainant had led his evidence after which the respondent examined the Branch Manager of the Axis Bank as DW.3. On the basis of an application filed by the respondent on 30/1/2017 DW.3 was recalled for further examination. Subsequently when the criminal case was fixed for arguments the respondents filed an application on 22/2/2018 for production of in all five documents as set out therein and also sought recall of DW.3 by a separate application. The learned Magistrate by the impugned order dated 12/3/2018 has allowed the production of the following four documents only on the ground that the documents relate to the defence taken by the respondent:

(a) Letter dated 21/2/2007 from the Ramba Hydrogen (Accused no.2) to Pyramid Finance Ltd. (complainant) requesting for the foreclosure of the loan of 70 lakhs and requesting for the issue of NO Dues Certificate.

(b) Letter dated 23/0/2007 received by Ramba Hydrogen from Pyramid

finance asking the accused no.2 to remit the amount into complainant's HDFC bank account at Panaji.

(c) Copies of the Demand draft dated 23/2/2007 made from UTI bank in favour of Pyramid finance and copy of the deposit challan made on 24/2/2007 for remittance of the said demand draft into their HDFC bank.

(d) Letter dated 2/3/2007 from the Pyramid Finance Ltd. (compliant) to the Ramba Hydrogen (Accused no.2) indicating refund of extra money which was recovered in Loan of Rs.70 lakhs during foreclosure.

3. By a separate order dated 27/3/2018 the learned Magistrate has again recalled DW3 for further examination. It is these two orders which are subject matter of challenge in this petition.

4. Shri Costa Frias the learned counsel for the petitioner, on instructions, states that the documents at serial nos.1 to 4 as have been allowed to be produced on record are not disputed and can be exhibited and read in evidence. It is submitted that the further re-call and examination of DW3 is not necessary.

5. Shri Rodrigues, the learned counsel for the respondents submits that in the event the documents at serial nos.1 to 4 are exhibited and read in evidence, the respondent shall not seek recall of the witness DW.3. In such

circumstances, the following order is passed:

ORDER:

(i) The order dated 27/3/2018 seeking to recall the witness DW.3 is hereby set aside. The learned Magistrate shall exhibit the documents at serial nos.1 to 4 of which the production is allowed by order dated 12/3/2018 and the same shall be read in evidence as admitted.

(ii) The Magistrate shall then decide the criminal case after hearing the arguments of the parties and in accordance with law.

(iii) Needless to mention that the Magistrate shall independently go into the probative value and effect of the documents on the defence of the respondent.

(iv) The learned Magistrate shall decide the criminal case as expeditiously as possible and in any event within a period of three months from the receipt of this order.

(v) The petition is disposed of in the aforesaid terms.

C. V. BHADANG, J.

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