

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 274 OF 2015

M/S Superbond Panels India Pvt. Ltd. .. Applicant/
Complainant

Versus

1. M/S Instawall Aluminium Private Ltd. & Ors. .. Respondents

WITH

CRIMIAL APPLICATION NO.275 OF 2015

M/S Superbond Panels India Pvt. Ltd. .. Applicant/
Complainant

Versus

1. M/S Southern Aluminum and Glazing
Industries Private Ltd. & Ors. .. Respondents

Mr.Manish Jain i/b S.M. Jain & Associates, Advocate for the
applicant.

Mr.S. Shamim i/b Shamim & Co., Advocate for the Respondent
Nos.1 to 3.

Mr.A. R. Kapadnis, APP for the Respondent State.

CORAM : PRAKASH D. NAIK, J.

DATED : 13th FEBRUARY 2018

P.C. :

1. Both these applications are preferred by the original
complainant seeking relief to file an appeal against the judgment

and order of acquittal passed by the Trial Court in respective complaint. The accused were prosecuted for offence under Section 138 of the Negotiable Instruments Act. The Trial Court in both the complaints acquitted the accused. While acquitting the accused it was observed that, the complainant has failed to prove that the orders were placed by the accused companies for supply of goods. The complainant has failed to prove that the goods were sold, supplied and delivered to the accused companies. It was also observed that the ledger extract produced on record is not proved in accordance with the provisions of the Evidence Act. It is also observed that the complainant has not established that the person who has filed the complaint had an authority to file the complaint.

2. The learned Advocate for the applicant/complainant submits that the authority was established by the Resolution. The complainant has proved its case by adducing evidence before the Court. The documents were exhibited in evidence. The respondents could not rebut the presumption under Section 139 of the Negotiable Instruments Act. The case of the respondents that the cheques were issued by way of security is not proved. On the contrary, the learned Advocate for the respondents submitted that the complainant had no authority to file the complaint. The witnesses have deposed that one Rahul Jain was conducting the transaction and he had knowledge about the transaction, however, he has not been examined. The delivery challans relied upon by the complainant does not establish that the goods were delivered to the accused companies. The cheques were issued as a security, which were misused by the complainant.

3. The arguments advanced by both the parties will have to be considered at the time of final hearing of the appeal. The complainant has raised arguable questions, which require grant of leave. Hence, I pass the following order.

: ORDER :

- (i) Leave granted in both the applications;
- (ii) Appeals are admitted;
- (iii) Call for record and proceedings.

(PRAKASH D. NAIK, J.)