IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 04.10.2018

CORAM

THE HON'BLE MR. JUSTICE M.V.MURALIDARAN

Crl.O.P.No.18170 of 2011 and
M.P.No.1 of 2011

M/s.V.S.Yarn
by its Partner, B.Thangavel
212, Sangnoor Main Road
Rathinapuri
Coimbatore. .. Petitioner

vs

M/s.Adhaven Cottage India (P) Ltd.
By its M.D., K.Natarajan
K.Ganapathipalayam
Gobi Sathy Main Road
Kasipalayam
Gobi Taluk. .. Respondent

Criminal Original Petition filed under Section 482 of Code of Criminal Procedure, to call for the records pertaining to C.C.No.286 of 2008 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam, quash the same.

For Petitioner : Mr.B.Nedunchezhiyan

For Respondent : Mr.A.V.Arun

ORDER

The petitioner had filed this original petition to call for the records pertaining to C.C.No.286 of 2008 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam and quash the same.

2. The facts in brief are as under: The respondent herein filed a complaint in C.C.No.286 of 2008 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam, alleging that the petitioner, rep. by its partner, B.Thangavel, was liable to pay a sum of Rs.1,45,000/- towards the yarn purchased from the respondent, for which the petitioner had issued a cheque bearing No.941283, dated 24.12.2007 for a sum of

Rs.1,45,000/- in favour of the respondent. It is stated that the respondent presented the said cheque on 24.06.2008 and the same was dishonoured by the bank on the ground "insufficient funds".

3. It is stated that when the cheque was issued by the petitioner on 24.12.2007, the respondent presented it on 24.06.2008, after lapse of six months time stipulated by the bank and, therefore, the bank ought to have returned the cheque on the ground that the cheque was "invalid", instead of stating "insufficient funds". It is added that inasmuch the respondent had presented the cheque after the six months period, in order to get over the delay on its part, the respondent had filed a false complaint.

4. The respondent issued statutory legal notice on 25.08.2008 to the petitioner and the same was received by the accused on 27.08.2008, to which the petitioner sent his reply and thereafter, the respondent filed the complaint before the learned Judicial Magistrate I, Gobichettipalayam, who had issued process.

5. In this backdrop, the present original petition is filed for the relief stated supra.

6. I heard Mr.B.Nedunchezhian, learned counsel for the petitioner and Mr.A.V.Arun, learned counsel for the respondent and perused the documents available on record.

7. At the outset, it needs to be noted that this Court at the time of admission of this original petition on 16.8.2011 had granted an order of interim stay and the same is still in force. By virtue of the said interim order, there is no progress in the case and the respondent had not taken any effort to vacate the interim order till date.

8. In the case on hand, admittedly the cheque issued by the petitioner is dated 24.12.2007 and the same was presented by the respondent only on 24.6.2008, i.e., one day after the lapse of the period of six months.

9. Qua the validity of the cheque presented after the period of six months, it is fruitful to refer to the decision of the Hon'ble Supreme Court in Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd., (2001) 3 SCC 609, wherein it is held as under:

> "7. It has further to be noticed that to make an offence under Section 138 of the Act, it is mandatory that the cheque is presented to "the bank" within a period of six months from the date

> on which it is drawn or within the period of its validity, whichever is earlier. It is the cheque drawn which has to be presented to "the bank" within the period specified therein. When a post-dated cheque is written or drawn, it is only a bill of exchange. The post-dated cheque become a cheque under the Act on the date which is written on the said cheque and the six months' period has to be reckoned, for the purposes of Section 138 of the Act, from the said date.
>
> .....
>
> A combined reading of Sections 3, 72 and 138 of the Act would leave no doubt in our mind that the law mandates the cheque to be presented at the bank on which it is drawn if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn, whether presented personally or through another bank, namely, the collecting bank of the payee."
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> (emphasis supplied)

10. When the respondent is presenting a cheque for encashment, it is obliged in view of provisions of Section 138 of the Negotiable Instruments Act to present it within six months. Therefore, if at all a prudent commercial person thinks that he should get the amount indicated by such cheque or negotiable instrument, he has to take the action within such period which would save him from the limitation expressed by Section 138 of the Act. It is presumed that a person transacting in commercial activities is well aware of all such eventualities. He has to act in a prudent way in a commercial transaction otherwise he has to necessarily suffer its consequences, which may be of any nature, including loss of money. In the instant case, the cheque was admittedly presented beyond the limitation period of six months.

11. For the foregoing reasons, this criminal original petition is allowed and the proceedings pertaining to C.C.No.286 of 2008 on the file of the learned Judicial Magistrate No.I, Gobichettipalayam are quashed. No costs. Consequently, connected miscellaneous petition is closed.

vs

Sd/-
Assistant Registrar(CCC)

//True Copy//

Sub Assistant Registrar

To

1.The Judicial Magistrate No.I,
Gobichettipalayam

2.-do-Thro The Chief Judicial Magistrate,
Erode

+1cc to Mr.B.Nedunchezhiyan, Advocate SR.NO.68710

SKV(CO)
sm:17.10.2018

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