

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 05.02.2018

CORAM:

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

Crl. R.C.No.1116 of 2017

M/s.Yoshiaki Chemicals Co. (P) Ltd.

a Private Limited Company

rep. by its Director, Paramasiven Moorghen

No.1/63A, N.H.Main Road

Pudhupalayam Pirivu, Perumanallur

Tiruppur

complainant rep. by Power Agent/Accountant

J.Ranganatha Naidu, son of Jaganathan

... Petitioner

Vs

1. Sivasakthi Traders

a Partnership Firm

rep. by its Partner, B.Subha

D.No.25/18, 7th Street

Oddakadu, College Road

Tiruppur - 2.

2. B.Subha

Partner and Authorised Signatory

Sivasakthi Traders

D.No.25/18, 7th Street

Oddakadu, College Road

Tiruppur - 2.

3. S.Maniamaran

Partner and Authorised Signatory

Sivasakthi Traders

D.No.25/18, 7th Street

Oddakadu, College Road

Tiruppur - 2.

4. M.Vairamani

Partner and Authorised Signatory

Sivasakthi Traders

D.No.25/18, 7th Street

Oddakadu, College Road

Tiruppur - 2.

5. P.Babu

Partner and Authorised Signatory
Sivasakthi Traders
D.No.25/18, 7th Street
Oddakadu, College Road
Tiruppur - 2.

... Respondents

PRAYER: Criminal Revision Case filed under Sections 397 and 401 of Cr.P.C. against the order dated 18.7.2017 passed by the learned Judicial Magistrate No.I, Tiruppur in C.M.P.No.701 of 2017.

For Petitioner : Mr.K.Myilsamy

For Respondents : Mr.K.C.Karl Marx

ORDER

This criminal revision case is filed against the order dated 18.07.2017 passed by the learned Judicial Magistrate No.I, Tiruppur in C.M.P.No.701 of 2017.

2. The facts in a nutshell are as under: The petitioner has filed a complaint under Section 138 of the Negotiable Instruments Act as against the respondents with a delay of 30 days. The reason given by the petitioner is that he is the power agent of the complainant, which is a company, and on 6.3.2017 he slipped down and suffered ankle swelling and pain and hence was bedridden for 30 days as per the advice of his doctor and was therefore unable to complain in time and it was only due to his health condition delay was caused. Seeking condonation of delay of 30 days in filing complaint under Section 138 of the Negotiable Instruments Act, he filed CMP.No.701 of 2017

3. The respondents resisted the said petition by filing a counter affidavit stating that the reason given by the petitioner for the delay is false and the medical certificate is not valid.

4. The learned Judicial Magistrate I, Tiruppur, by the order under challenge, dismissed the petition seeking condonation of delay of delay holding that the complainant company ought to have authorized any other person to file a complaint in time if the power agent is injured.

5. Assailing the said order, the present criminal revision case is filed.

6. The learned counsel for the petitioner contended that the power agent of the complainant company slipped down on 6.3.2017 and hence the delay occurred in filing the complaint and inasmuch as the delay was neither wilful nor wanton and in fact bona fide, the Court below ought to have condoned the same.

7. The learned counsel for the petitioner further contended that the respondents issued cheques for a sum of Rs.3,54,442/-, which were returned, and if the delay is not condoned, they would be put to huge loss. He added that it was based on settlement arrived before Lok Adalat that the respondents had paid a sum of Rs.4 lakhs by way of demand drafts and Rs.3,54,442/- by cheques, with specific consent to honour them and inasmuch as the cheques have been returned violating the terms of settlement, the bona fide claim of the petitioner should not be rejected based on technicalities.

8. I heard Mr.K.Myilsamy, learned counsel for the petitioner and Mr.K.C.Karl Marx, learned counsel for the respondents and perused the documents available on record.

9. Before advertng to the merits of the matter, this Court feels it just and proper to reproduce relevant portions of Sections 138 and 142 of the Negotiable Instruments Act, which read as under:

"Section 138. Dishonour of cheque for insufficiency, etc. of funds in the account.-

.....

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been 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;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the Cheque, within thirty days of the receipt of information by him from the bank regarding the return of the Cheque as unpaid; and

(c) the drawer of such Cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the Cheque, within fifteen days of the receipt of the said notice.

Section 142. Cognizance of offences—Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.

(c) no Court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the First Class shall try any offence punishable under Section 138."

(emphasis supplied)

10. It is seen from the records that the petitioner complainant had sent legal notice to the respondents on 13.1.2017 and the same were returned on 23.1.2017. It is seen that even before that by virtue of an award passed in Lok Adalat, post dated cheques were issued by the respondents bearing Nos.001052 for Rs.1,45,189/- and 001053 for Rs.2,09,253/-. To substantiate plea of the petitioner is a power agent, he had also appended the power of attorney dated 6.3.2016. To establish that the power agent had suffered some physical inability, he produced a Medical Certificate issued by the Doctor.

11. The proviso appended to Section 142(b) of the Negotiable Instruments Act was inserted by the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002 and the legislative intent was, no doubt, to overcome the technicality of limitation period. The Statement of Objects and Reasons appended to the Amendment Bill, 2002 suggests that the introduction of this proviso was to provide discretion to the Court to take cognizance of offence even after expiry of the period of limitation, as has been held in MSR Leathers Vs. S. Palaniappan (2013) 1 SCC 177. In other words, such proviso was introduced only with a view to obviate the difficulties on the part of the complainant.

12. The Hon'ble Supreme Court in THE COLLECTOR, LAND ACQUISITION, ANANTNAG AND ANOTHER VS. MST. KATIJI AND OTHERS, AIR 1987 SC 1353 has laid down contours for consideration of a plea for condonation of delay as under:

"4. When substantial justice and technical considerations are pitted against each other, cause of substantial justice deserves to be preferred for the other side cannot claim to have vested right in injustice being done because of a non-deliberate delay".

"6. It must be grasped that judiciary is respected not on account of its power to legalize injustice on technical grounds but because it is capable of removing injustice and is expected to do so".

13. The proviso to Section 142(b) of the Negotiable Instruments Act makes it amply clear that the Magistrate is empowered to condone the delay if there is sufficient cause. Thus, sufficiency of cause if made out by the complainant can be a good ground to condone the delay. Until and unless the cause shown is mala fide or does not come within the ambit of semblance of truth, exercise of discretionary jurisdiction to condone the delay should not be normally entertained. However, even slight sufficient cause is shown it would be a ground to condone the delay, since substantial justice will have to give way to technicalities. It is for this precise reason the legislature, keeping in mind these aspects have introduced proviso to Section 142(b) of Negotiable Instruments Act. In the case on hand, nothing has been shown to the contra to establish the plea raised by the petitioner is tainted with malafide.

14. When the respondents are dishonouring the liability due and payable by them as agreed in the Lok Adalat award and more so, when the petitioner (power of attorney) had stated that the delay of 30 days had occurred only on account of his physical inability and he had also produced a medical certificate to fortify the said stand, this Court feels it just and proper to condone the delay, of course, on conditions.

15. For the foregoing reasons, this revision is allowed, of course, on condition that the petitioner shall pay a total sum of Rs.3,000/- to the respondents within a period of two weeks from the date of receipt of a copy of this order. The learned

Judicial Magistrate No.I, Tiruppur is directed to number the complaint and dispose of the same within six months thereafter. The order dated 18.07.2017 passed by the learned Judicial Magistrate No.I, Tiruppur in C.M.P.No.701 of 2017 is set aside. No costs.

vs

Sd/-
Deputy Registrar

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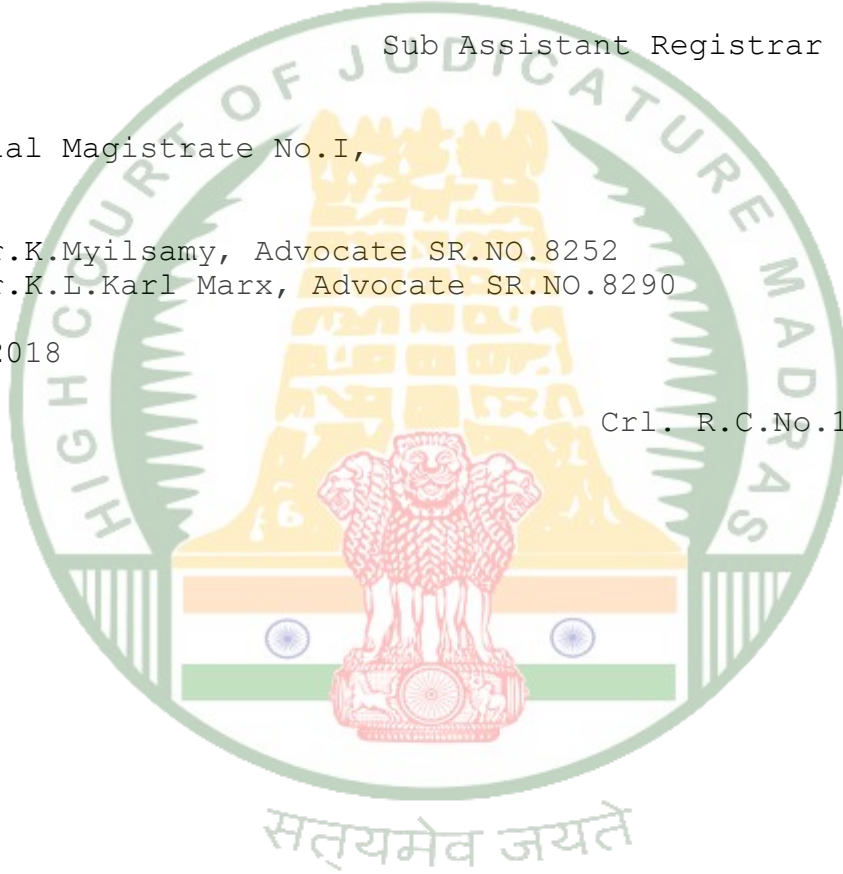
To Sub Assistant Registrar

The Judicial Magistrate No.I,
Tiruppur.

+1cc to Mr.K.Myilsamy, Advocate SR.NO.8252
+1cc to Mr.K.L.Karl Marx, Advocate SR.NO.8290

sm:31.10.2018

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