

In the High Court of Punjab and Haryana at Chandigarh

CRM M-21382 of 2018 (O&M)

Reserved on : 14.08.2018

Date of Decision: September 05, 2018

Ashwani Chawla

... Petitioner

Versus

M/s Impulse Overseas Pvt. Ltd.

... Respondent

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Manish Soni, Advocate,
for the petitioner.

Mr. Ashish Sanghi, DAG, Haryana.

Ms. Munisha Gandhi, Sr. Advocate with
Mr. Viraj Gandhi, Advocate,
for the complainant.

P.B. Bajanthri, J.

1. In the present petition, petitioner has questioned the validity of order dated 02.11.2017 passed by JMIC whereby petitioner's application filed under Sections 446/457/536 of Companies Act, 1956 for impleading the official liquidator on behalf of the petitioner-company and for compliance of order dated 23.08.2017 passed by Delhi High Court, has been dismissed, as well as, order of the ASJ dated 06.04.2018 by which revision petition filed by the petitioner has been dismissed.

2. Petitioner filed application under Sections 446, 457 and 536 of Act, 1956 and it was dismissed on 15.09.2017. In this background, revision petition bearing No. 55 of 2018 filed against order dated 02.11.2017 passed by JMIC through which said court dismissed application dated 15.09.2017

moved by the petitioner under Sections 446, 457, 536 of Companies Act, 1956 for issuing notice to the official liquidator being appointed on behalf of accused company by Delhi High Court and to stay the proceedings temporarily till the appearance of the liquidator. It is asserted that JMIC has erred by declining said application and completely overlooked and ignored specific observations of Delhi High Court / Company Court dated 23.08.2017. As per said observations of Delhi High Court, it is the duty of the petitioner to seek leave of appeal of Delhi High Court for proceeding further with present proceedings and that in absence of such leave, present complaint is not even maintainable. Earlier also, petitioner filed application under Sections 446, 457 and 536 of Companies Act, 1956 (for short 'Act, 1956') before JMIC and it was dismissed on 16.10.2014 and it has attained finality. Delhi High Court had no occasion to peruse dismissal order dated 16.10.2014 by which petitioner's 1st application was dismissed. In the present matter, company is the prime accused if offence under Section 138 Negotiable Instruments Act, 1881 has been committed and only thereafter responsibility of petitioner can be held under Section 141 of the Act as a vicarious liability for the affairs of the company. The company now can only be represented through the official liquidator appointed by Delhi High Court. Revision petition be accepted, impugned order dated 15.09.2017 passed by JIMC may kindly be set aside, directions be issued to the official liquidator for his appearance in the present matter and trial court be directed to comply with order dated 23.08.2017 passed by Delhi High Court and to stay proceedings temporarily till the appearance of the liquidator.

3. Learned counsel for the petitioner submitted that during pendency of proceedings under Section 138 of Negotiable Instruments Act

in a complaint case before JMIC if the company is wound up in that event Section 446 of the Company's Act 1956 now it is Section 279 under Company's Act, 2013 is attracted to the extent of impleading liquidator for the purpose of further proceedings with the leave of the Tribunal (Company Tribunal) till such a permission is given further proceedings are to be stayed. Both the Courts below JMIC and ASJ have not appreciated applicability of Section 446 on the score that winding up of Company was during pendency of the criminal complaint and was also after issuance of cheque which was the subject matter of complaint under Section 138 of the Negotiable Instruments Act. Learned counsel for the petitioner relied on the following decisions:-

- (i) 1994 (1) BC 85 Committee of Management of Baranagore Jute Factory Vs. State of West Bengal Para 11.**
- (ii) 1998 (5) COMP L.J. 99 Saurabh N. Soparkar Vs. Official Liquidator Renco Gears Limited.**
- (iii) 2007 (3) BC 643 Rajender Steels Limited in Liquidation in Re. and Anr. Vs. Official Liquidator High Court, Uttar Pradesh. Para 5.**
- (iv) 2007 (2) DCR 36 Suresh K. Jasani Vs. Mrinal Dyeing and Manufacturing Company Ltd. and others. Para 5.**

4. Learned counsel for the petitioner further submitted that Courts below have not examined application of Section 279 read with Section 290 of the Company's Act, 2013 (for short 'Act, 2013'). What has been examined is Section 446 of the Act, 1956. Under the Act, 1956, Section 446 was limited "any suit or proceedings by or against the Company". Similar is the wording in Section 279. Whereas Section 290 is for "to institute or defend any suit, prosecution, or other legal proceedings, civil or criminal in the name of the company". Having regard to the language in the

Section 290 of the Act, 2013 there is a scope of applicability of the then Section 457 under the old Act now Section 290 of the Company's Act, 2013 is attracted in the present case insofar as continuation of complaint under Section 138 of the Negotiable Instruments Act insofar as impleading Liquidator till then staying further proceedings. It was also submitted that Section 457 relates to powers of the Liquidator is required to be taken into consideration. Sub-Section 1 of Section 457 (A) provides “(a) to institute or defend any suit, prosecution, or other legal proceedings, civil or criminal in the name and on behalf of the Company,”. In view of these facts and circumstances read with the decisions (supra) application filed under Section 446, 457, 536 of the Company's Act is to be allowed.

5. Per contra learned counsel for the respondent vehemently contended that cheques which were disputed and which were subject matter of complaint under Section 138 proceedings are dated 8.9.2012 to 30.11.2012. Whereas, the Company was wound up on 27.03.2014. Therefore, application under Section 446 of the Company's Act is not maintainable. It was further contended that petitioner had earlier filed an application under Section 446 and it was dismissed on 16.10.2014 for which petitioner has not exhausted his remedy of revision. He had filed second application under Section 446 once again on 15.09.2017 with reference to Delhi High Court order dated 23.08.2017. Petitioners' Second application has been rejected by JMIC on 12.11.2017 passing a very detailed order relying on Division Bench decision of Delhi High Court in **Krishna Texport Industries Ltd. Vs. DCM Limited** dated 23.05.2008. Learned counsel for the respondent in support of her contention that Section 446 of the Companies Act, 1956 or Section 279 read with Section 290 of the

Company's Act, 2013 is not applicable to the proceedings under 138 of Negotiable Instruments Act relied on (i) ***Krishna Texport Industries Limited (supra)*** (ii) ***Indorama Synthetics (I) Limited Vs. State of Maharashtra and others***, reported in [2016] 198 CompCas 46 (Bom) passed in Criminal Writ Petition No. 1280 of 2010 decided on 6.5.2016 (Division Bench) Para 36.

6. Heard learned counsel for the parties.

7. Question of law which arises for consideration in the present petition is whether expression of suit or other legal proceedings in Section 446 (1) and the expression 'suit or proceedings' in Section 446 under Chapter 2 of para 7 of the Company's Act, 1956 or Section 279 of the Company's Act 2013 include criminal complaints filed under Section 138 of Negotiable Instruments Act or not?

Firstly having regard to the date of issuance of cheque during the period from 8.9.2012 to 30.11.2012 read with winding up of company on 27.3.2014 provisions of the Companies Act are not attracted so as to entertain application under Section 446 of the Companies Act or to read the application under Section 279 read with 290 of the Companies Act, 2013. It would be useful to reproduce Section 446 appears in Chapter 2 of Part 7 of the Companies Act, 1956.

Section 446 of Companies Act, 1956 reads as under:-

“446. Suits stayed on winding up order – (1) When a winding up order has been made or the Official Liquidator has been appointed as provisional liquidator, no suit or other legal proceeding shall be commenced, or if pending at the date of the winding up order, shall be proceeded with, against the company, except by leave of the

[Tribunal] and subject to such terms as the [Tribunal] may impose.

(2) The Tribunal shall, notwithstanding anything contained in any other law for the time being in force, have jurisdiction to entertain, or dispose of -

(a) any suit or proceeding by or against the company;

(b) any claim made by or against the company (including claims by or against any of its branches in India);

(c) any application made under section 391 by or in respect of the company;

(d) any question of priorities or any other question whatsoever, whether of law or facts, which may relate to or arise in course of the winding up of the company;

whether such suit or proceeding has been instituted, or is instituted, or such claim or question has arisen or arises or such application has been made or is made before or after the order for the winding up of the company, or before or after the commencement of the Companies (Amendment) Act, 1960 (65 of 1960).

*(3) * * **

(4) Nothing in sub-section (1) or sub-section (3) shall apply to any proceeding pending in appeal before the Supreme Court or a High Court.”

Section 446 makes it clear that, in respect of a company in winding up or where proceedings in winding up have been filed, the Company Court, now Tribunal has to see that the Company are not recklessly given away or frittered, the main obligation of the Company Court would be to oversee the affairs of the company in order to make the debts of its secured or unsecured creditors as also of its share holders and powers have been accordingly

vested on it.

8. It is relevant to reproduce Section 138 of the Negotiable Instruments Act, 1881 (for short the 'Negotiable Instruments Act') which reads as under:-

“138. Dishonour of cheque for insufficiency, etc., of funds in the account.—Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for 8 [a term which may be extended to two years’], or with fine which may extend to twice the amount of the cheque, or with both:

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, 9 [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.

Explanation.—For the purposes of this section, “debt of other liability” means a legally enforceable debt or other liability.”

The purpose of Section 138 of the Negotiable Instruments Act which can be assumed is to protect or safeguard the credibility of commercial transactions and to avoid bounce of cheques by providing a personal criminal liability against the drawer of the cheque in public interest. In other words, no civil liability or any liability against the assets of the drawer of the cheque is contemplated under Section 138 of the Negotiable Instruments Act. Nature of offence under Section 138 would be civil wrong and 2002 Amendment made it compoundable offence – regulatory offence. Under Section 139 burden is on the accused and standard of proof was of “preponderance of probabilities”. Object is both punitive and compensatory. Not civil proceedings – it is not civil suit for recovery, scheme provider for punishment with imprisonment or with fine which could be extend double the amount to cover both interest and costs. That apart object is not merely penal but to make the accused honour the negotiable instrument. Therefore, it follows that the provision of Section 446 “(1) of the Companies Act, 1956 can have apparently and in essence no obligation whatsoever to the proceedings under Section 138 of the Negotiable Instruments Act, it is to be noted that 138 proceedings is not a

suit or proceeding having any direct bearing on the proceedings for winding up of the company. If one considers the provisions of Section 138 of the Negotiable Instruments Act, which are introduced subsequently by way of amendment in the said Act, in the year 1988, it being a subsequent litigation, it will necessarily overrides the provisions of general statute, like the Companies Act, 1956. Here it is to be noted that Companies Act, 2013 is not applicable having regard to the introduction of Companies Act on 30.08.2013, the date on which it was gazetted with the assent of the President on 29.08.2013 and read with issuance of cheques dated 08.09.2012 to 30.11.2012.

9. The petitioner who has cited decision of the Bombay High Court supra in the case of ***Suresh K. Jasani Vs. Mrinal Dyeing and Manufacturing Company Ltd.*** and others was the subject matter of Division Bench of the Bombay High Court in the case of ***Indorama Synthetics (i) Limited Vs. State of Maharashtra and others.*** Issue before the Division Bench is relating to reference to the extent of 2 Single Judges have taken a different view in respect of applicability of Section 446 of the Companies Act in 138 proceedings under the Negotiable Instruments Act and reference was “whether the expression ‘suit or other proceedings’ in Section 446(1) and the expression ‘suit or proceedings’ in Section 442 (repealed), under Chapter – II of Part VII of the Companies Act, 1956, include criminal complaints filed under Section 138 of Negotiable Instruments Act, 1881?” Division Bench of the Bombay High Court considered the reference as follows:-

“36. In our considered opinion, having regard to the earlier decisions referred above, taking a consistent

view, which is in consonance with the spirit, purpose and object of the provisions of Section 446 (1) of the Companies Act and Section 138 of the Negotiable Instruments Act, we uphold the view taken by the Single Judge in the matter of Firth (India) (Supra) and accordingly proceed to answer the Reference placed for our consideration, as follows:-

“The expression “suit or other proceedings” in Section 446(1) under Chapter II of Part VII of Companies Act, 1956, does not include criminal complaints filed under Section 138 of the Negotiable Instruments Act, 1881.”

Section 138 of the Negotiable Instruments Act has overriding effect against Section 446 of the Companies Act. Chapter XVII dealing with the penalties in case of dishonour of certain cheques for insufficiency of funds in the accounts consisting of Section 138 to 142 incorporated in the Negotiable Instruments Act by the Central Act 66 of 1988 w.e.f. 1.4.1989. Thus special provisions are enacted with the subject and specific intention of safeguarding and sustaining the credibility of commercial transactions. Thus, provisions are incorporated in the Negotiable Instruments Act whereas the entire provisions of the Companies Act including Section 446 were in force. Therefore, it has to be presumed that Parliament enacted those provisions fully aware of the provisions of the Companies Act including Section 446. Therefore, the subsequent Act enacting certain special provisions has got overriding effect over the provisions of statute though contained in the special provisions. Thus, the present matter is squarely covered by Division Bench of Delhi High Court in **Krishna Texport Industries Ltd.** and Bombay High Court in **Indorama Synthetics**

10. While deciding revision by the Revisional Court has taken note of that the petitioner's second application under Section 446 is not maintainable. Of course the petitioner is aware of the fact that there is no provision for recalling or reviewing the order dated 16.10.2014 by which his first application under Section 446 was rejected. Section 362 Cr.P.C. bar the court to recall the order in criminal cases. Further revisional Court has taken note of that there is a delay in presenting the revision to the extent of 4 days and there is no application for condonation of delay in presenting the revision petition. Revision petition is to be presented within 90 days. The Revisional Court has recorded the date of submission of application and obtaining certified copy and presenting of the revision petition so as to say that there is a delay of 4 days in presenting the revision petition. Even on this issue, petitioner's application under Section 446 is to be rejected. According to Section 3 of Limitation Act, no appeal or application can be entertained after the limitation period is over. For the purpose of entertaining such appeal / revision one should have file application for extension of time of limitation under Section 5 of the Limitation Act. At this juncture, it is relevant to peruse the Supreme Court's decision rendered in ***Ramesh Chand Sharma vs. Udham Singh Kamal and others***, reported in ***(1999) 8 SCC 304***. Para No.4 reads as under:-

“4. Respondent 1 Udham Singh Kamal on 2.6.1994 filed original application (OA) before the Himachal Pradesh Administrative Tribunal. This OA was admittedly beyond the prescribed period of limitation of three years as provided under Section 21 of the Administrative Tribunals Act, 1985. As regards the limitation in para 5, the first respondent has stated as under:-

“The applicant further declares that the

application is within the limitation prescribed in Section 21 of the Administrative Tribunals Act, 1985”.

This averment clearly indicates that the first respondent was all along asserting that he had filed OA within limitation but it was not so. The appellants in both these appeals have raised a contention that the OA was beyond three years and, therefore, the same was barred by limitation under Section 21 of the Administrative Tribunals Act, 1985. Despite this objection raised by the appellants, the first respondent did not file any application for condonation of delay. Section 21(3) of the Act gives power to the Tribunal to condone the delay if sufficient cause is shown.”

11. The cheques were relating to the period from 08.09.2012 to 30.11.2012. Complaint was filed in the year 2013 at the behest of the petitioner matter is being dragged on account of one or the other reasons.

Para 8 of the ASJ order dated 6.4.2018 reads as under:-

“8. Coming back to the application seeking pre-arrest bail, the past record of the applicant is not unblemished. Once he was declared a proclaimed person on account of his unjustified absence after which he was fortunate enough that Hon'ble High Court allowed him pre-arrest bail. For as many as 22 times, he has availed liberty of the court to remain exempted from personal appearance at the time of call of the case. At no stage, he informed the court in advance about his inability to come present on the date fixed in his matter. On 17.01.2018, his counsel Sh. Paras Yadav, Advocate was before the court to request for an adjournment, but even he was not informed by the accused about alleged illness and it was for this reason that the counsel pleaded his ignorance about the whereabouts of the accused. Now applicant is

coming with a counter allegation over the court that trial court was duly informed about his ill health still trial court, to his strange, not correctly mentioned in the zimini orders in the morning itself that there is a written application seeking exemption from appearance. This court has no reason to disbelieve learned trial court when the trial court in its first zimini order refers the presence of Sh. Paras Yadav, Advocate with a sorry finger about the whereabouts of the accused. Accused has not whispered even a single word about the conduct of his counsel Sh. Paras Yadav, Advocate and it strengthens that Sh. Paras Yadav, Advocate was actually present before the court on said day, but accused was even having a communication gap with his counsel. Accused is further levelling allegation over the trial court that learned trial court on the pretext of non availability of medical certificate at that point of time wrongly declined the exemption application and passed wrong orders. No medical certificate of accused has been placed before this court to show that accused was actually medically declared unfit to attend the court on 17.01.2018. This conduct of the applicant although makes a tough case for the accused, but courts in India are always humane and never go low to teach a lesson to the accused at the stage of grant of concession of bail even if accused has committed some procedural lapses in such like matters. The focus of the courts always remains over deciding the cases on its merits. Since all the three cases before learned trial court have already ripened and were running fixed for final arguments when the accused turned absent in each of them, hence, ends of justice will meet if accused Ashwani K. Chawla is stood directed to surrender before learned trial court on 11.04.2018 to attend further hearings in all those

matters under protective order of this court, but he has to indemnify the inconveniences faced by the complainant, so, he will have to tender bank draft in the sum of rupees one lac in favour of complainant in each of the three complaints as costs for unnecessary harassment to complainant, upon which he would be allowed to fresh bail by learned trial court in the sum of Rs.5,00,000/- with one surety. The above mentioned cost will, however, not be considered as any payment under the provisions contained under Section 446 Cr.P.C. In other words, learned trial court will have to initiate appropriate steps under section 446 Cr.P.C. against the accused and his surety, as per law and the above direction for payment of cost to the complainant can well be considered as a mitigating instance in favour of the accused in said proceedings. Consequently, the bail applications stands disposed of accordingly.”

12. Supreme Court in the case of ***Meters and Instruments Private Limited and another vs. Kanchan Mehta***, reported in ***(2018) 1 SCC 560***, held that 138 proceedings under Negotiable Instruments Act are to be disposed within six months. Para 13 reads as under:-

“13. This Court in Indian Bank Assn. v. Union of India, (2014) 5 SCC 590 approved the directions of the Bombay High Court, Calcutta High Court and Delhi High Court in KSL and Industries Ltd. v. Mannalal Khandelwal, 2005 SCC OnLine Bom 89, Indo International Ltd. vs. State of Maharashtra, 2005 SCC OnLine Bom 865, Harischandra Biyani v. Stock Holding Corpn. of India Ltd., 2005 SCC OnLine Bom 1216, Magma Leasing Ltd. vs. State of W.B., 2007 SCC OnLine Cal 375 and Rajesh Agarwal vs. State, 2010 SCC OnLine Del 2511 laying down simpler procedure for disposal of cases under Section 138 of the Act. This Court directed as follows: (Indian Bank Assn.'s

case, SCC P.602, paras 23-24)

“23. Many of the directions given by the various High Courts, in our view, are worthy of emulation by the criminal courts all over the country dealing with cases under Section 138 of the Negotiable Instruments Act, for which the following directions are being given:-

23.1. The Metropolitan Magistrate / Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinise the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.

23.2. The MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. The court, in appropriate cases, may take the assistance of the police or the nearby court to serve notice on the accused. For notice of appearance, a short date be fixed. If the summons is received back unserved, immediate follow-up action be taken.

23.3. The court may indicate in the summons that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, the court may pass appropriate orders at the earliest.

23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take

notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for recalling a witness for cross-examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the above-mentioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above.”

Supreme Court in ***Mohd. Akhtar vs. State of Jammu & Kashmir***, reported in ***(2018) 5 SCC 497*** while referred to Vinod Kumar vs. State of Punjab para no. 12 reads as under:

“12. In Vinod Kumar vs. State of Punjab, (2015) 3 SCC 220, it has been held thus:-

“57.3. There is no cavil over the proposition that there has to be a fair and proper trial but the duty of the court while conducting the trial is to be guided by the mandate of the law, the conceptual fairness and above all bearing in mind its sacrosanct duty to arrive at the truth on the basis of the material brought on record. If an accused

for his benefit takes the trial on the path of total mockery, it cannot be countenanced. The court has a sacred duty to see that the trial is conducted as per law. If adjournments are granted in this manner it would tantamount to violation of the rule of law and eventually turn such trials to a farce. It is legally impermissible and jurisprudentially abominable. The trial courts are expected in law to follow the command of the procedure relating to trial and not yield to the request of the counsel to grant adjournment for non-acceptable reasons.

57.4. In fact, it is not at all appreciable to call a witness for cross-examination after such a long span of time. It is imperative if the examination-in-chief is over, the cross- examination should be completed on the same day. If the examination of a witness continues till late hours the trial can be adjourned to the next day for cross-examination. It is inconceivable in law that the cross-examination should be deferred for such a long time. It is anathema to the concept of proper and fair trial.

57.5. The duty of the court is to see that not only the interest of the accused as per law is protected but also the societal and collective interest is safeguarded. It is distressing to note that despite series of judgments of this Court, the habit of granting adjournment, really an ailment, continues. How long shall we say, "Awake! Arise!". There is a constant discomfort. Therefore, we think it appropriate that the copies of the judgment be sent to the learned Chief Justices of all the High Courts for circulating the same among the learned trial Judges with a command to

follow the principles relating to trial in a requisite manner and not to defer the cross-examination of a witness at their pleasure or at the leisure of the defence counsel, for it eventually makes the trial an apology for trial and compels the whole society to suffer chicanery. Let it be remembered that law cannot allowed to be lonely; a destitute.”

13. Supreme Court in the case of **Gayathri vs. M. Girish**, reported in **(2016) 14 S.C.C., 142** in para nos. 10 and 11 held as under:-

“10. In this context, we may profitable reproduce a passage from Shiv Cotex v. Tirgun Auto Plast (P) Ltd., (2011) 9 SCC 678 wherein it has been stated that: (SCC p.682, para 15):

“15. It is sad, but true, that the litigants seek --- and the courts grant ---adjournments at the drop of the hat. In the cases where the Judges are little proactive and refuse to accede to the requests of unnecessary adjournments, the litigants deploy all sorts of methods in protracting the litigation.”

The court has further laid down that: (SCC p. 682, para 15)

“15. ... It is not surprising that civil disputes drag on and on. The misplaced sympathy and indulgence by the appellate and revisional courts compound the malady further.”

11. In **Noor Mohammed v. Jethanand**, (2013) 5 SCC 202 commenting on the delay caused due to dilatory tactics adopted by the parties, the Court was compelled to say: (SCC p. 215, para 28)

“28. In a democratic set-up, intrinsic and embedded faith in the adjudicatory system is of seminal and pivotal concern. Delay gradually declines the citizenry faith in the system. It is the faith and faith alone that keeps the system alive. It

provides oxygen constantly. Fragmentation of faith has the effect-potentiality to bring in a state of cataclysm where justice may become a casualty. A litigant expects a reasoned verdict from a temperate Judge but does not intend to and, rightly so, to guillotine much of time at the altar of reasons. Timely delivery of justice keeps the faith ingrained and establishes the sustained stability. Access to speedy justice is regarded as a human right which is deeply rooted in the foundational concept of democracy and such a right is not only the creation of law but also a natural right. This right can be fully ripened by the requisite commitment of all concerned with the system. It cannot be regarded as a facet of Utopianism because such a thought is likely to make the right a mirage losing the centrality of purpose. Therefore, whoever has a role to play in the justice-dispensation system cannot be allowed to remotely conceive of a casual approach.”

And, again: (SCC p. 216, para 31)

“31. Thus, from the aforesaid, it is clear as day that everyone involved in the system of dispensation of justice has to inspire the confidence of the common man in the effectiveness of the judicial system. Sustenance of faith has to be treated as spinal sans sympathy or indulgence. If someone considers the task to be Herculean, the same has to be performed with solemnity, for faith is the “elan vital” of our system.”

14. In view of the above discussion on legal, facts of the case and conduct of the petitioner, instant petition stands dismissed with exemplary cost of ₹ 1,00,000/-. Cost shall be paid to the respondent within a period of 3 months from today. Parties are hereby directed to join further

proceedings. Court below is requested to make all necessary endeavour to decide the complaint within a reasonable period in terms of the observation of the Supreme Court in the case of *Meters and Instruments Private Limited and another vs. Kanchan Mehta* reported in (2018) 1 Supreme Court Cases 560.

September 05, 2018
vkd

[P.B. Bajanthri]
Judge

Whether reasoned / speaking : Yes

Whether reportable : Yes