

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M-5733-2018 (O&M)

Date of decision: 14.11.2018

Ram Singh

..... Petitioner

Versus

M/s Janta BKO

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

PRESENT: Mr. Rishav Jain, Advocate for the petitioner.

Mr. Kulwinder Singh, Advocate for the respondent.

RAMENDRA JAIN, J. (ORAL)

Through this petition under Section 482 Cr.P.C., the petitioner has prayed for quashing Criminal Complaint No. 177 dated 21.07.2016 (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 (for short-'the Act'); summoning order dated 27.09.2016 (Annexure P-3) and order dated 19.09.2017 (Annexure P-6), vide which application of the petitioner for dismissal of aforesaid complaint being time barred was dismissed by the trial Court.

Briefly, respondent filed a complaint Annexure P-1, against the petitioner under Section 138 of the Act along with an application dated 21.07.2016 (Annexure P-2), for condonation of delay, wherein after recording preliminary evidence, the trial Court, summoned the petitioner vide order dated 27.09.2016 (Annexure P-3). Pursuant thereto, the petitioner appeared and moved application dated 15.03.2017

(Annexure P-4) to dismiss the complaint being time barred.

The trial Court, after hearing both the sides, dismissed the same vide order dated 19.09.2017 (Annexure P-6).

Learned counsel for the petitioner *inter alia* contends that the trial Court has erred in summoning the petitioner and proceeding against him, without deciding the application (Annexure P-2) for condonation of delay filed by the respondent-complainant along with his complaint. At the first instance, the trial Court was required to decide the application for condonation of delay moved by the respondent-complainant, before summoning and proceeding further. In support of his contentions, learned counsel for the petitioner has relied upon a judgment of the Apex Court in **Econ Antri Ltd. Vs. Rom Industries Ltd. And another, 2014(11) SCC 769.**

On the other hand, learned counsel for respondent-complainant pleading the legality and validity of the impugned order, urged that from the perusal of impugned order Annexure P-6, it is very much evident that application of condonation of delay filed by the respondent had already been accepted, before summoning the petitioner.

Having given anxious consideration to the rival submissions of both the sides, this Court is of the considered opinion that the instant petition is completely devoid of any merit, for the reasons to follow:

For ready reference, the relevant portion of impugned order Annexure P-6, is reproduced hereunder:-

“.....The complainant has moved the present complaint under Section 138 of the Negotiable Instruments Act, claiming amount towards the accused. The complainant

has explained that due to summer vacations, the complainant could not file the present complaint and accordingly, he moved application for condonation of delay while presenting the present complaint. The complainant has duly explained the delay to file the present complaint and accordingly, the instant application for dismissal of complaint on account of expiry of limitation, is hereby dismissed.....”

Perusal of aforesaid relevant portion of impugned order makes it abundantly clear that the trial Court had already accepted the application for condonation of delay filed by respondent, at the time of filing of his complaint under Section 138 of the Act, but due to inadvertent mistake specific words qua acceptance of the same were not mentioned. However, the intention of the trial Court in the impugned order is very clear about condonation of delay in filing the complaint by the respondent. Therefore, impugned order Annexure P-6 is not liable to be set aside being perfectly legal.

No body should be condemned on technical grounds. If, specific words for acceptance of application for condonation of delay are found missing, the respondent-complainant may not be penalized for the same, more particularly, when from the impugned order the intention of the trial Magistrate, is unambiguous and clear that the application of respondent-complainant was entertained and accepted.

The facts and circumstances of the judgment relied upon by learned counsel for the petitioner are entirely different from the facts of instant case, inasmuch, as in the said case, complaint was filed, after serving

second legal notice. Therefore, in these circumstances it was held that the applicant ought to have filed complaint within the period of limitation of serving initial legal notice, whereas there are no such circumstances in the instant case.

I have carefully gone through the impugned orders of the trial Court and find no illegality or perversity in the same. The instant petition being meritless is dismissed.

November 14, 2018

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**(RAMENDRA JAIN)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No