

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl. M.C. No.1684/2016**

Judgment reserved on : 20.12.2017
Date of decision : 20.05.2019

M/S SOMANI WORSTED PRIVATE LIMITEDPetitioner

Through: Mr. Vivek Kohli, Mr. Nikita
Batra, Ms. Neha Rajpal, Ms.
Pankhuri, Advs.

versus

AEZ INFRATECH PVT. LTD. & ORS. Respondents

Through: Mr. Praveen Kumar, Adv. for
R-1 to R-4.

+ **Crl. M.C. No.1685/2016**

M/S SOMANI WORSTED PRIVATE LIMITEDPetitioner

Through: Mr. Vivek Kohli, Mr. Nikita
Batra, Ms. Neha Rajpal, Ms.
Pankhuri, Advs.

versus

AEZ INFRATECH PVT. LTD. & ORS. Respondents

Through: Mr. Praveen Kumar, Adv. for
R-1 to R-4.

+ **Crl. M.C. No.1698/2016**

M/S SOMANI WORSTED PRIVATE LIMITEDPetitioner

Through: Mr. Vivek Kohli, Mr. Nikita
Batra, Ms. Neha Rajpal, Ms.
Pankhuri, Advs.

versus

AEZ INFRATECH PVT. LTD. & ORS. Respondents

Through: Mr. Praveen Kumar, Adv. for
R-1 to R-4.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT

ANU MALHOTRA, J.

1. The three petitions i.e. Crl. M.C. No.1684/2016, Crl. M.C. No.1685/2016 and Crl. M.C. No.1698/2016, all filed by the same petitioner M/s Somani Worsted Pvt. Ltd. assail the common order dated 22.03.2016 of the learned ASJ-03, Patiala House Courts, New Delhi in Crl. Rev. No.117/2015, Crl. Rev. No.118/2015 and Crl. Rev. No.119/2015, vide which the orders dated 21.08.2015 and 15.10.2015 of the learned MM-05, New Delhi District, Patiala House Courts, New Delhi in Complaint Case Nos.343/1/2014, 349/1/2014 and 350/1/2014 were set aside with directions to the learned trial Court to pass a fresh order in view of the Negotiable Instruments (Amendment) Ordinance, 2015 and the 'Act' passed subsequently.

2. Submissions have been made on behalf of either side.

3. A bare perusal of the complaints that were filed by the petitioner herein indicates that they were all instituted under Sections 138 and 141 of the Negotiable Instruments Act, 1881 in the year 2012 and are against AEZ Infratech Pvt. Ltd., the respondent no.1, its Managing Director, Shri Sanjeev Jai Narain Aeren, its Director,

Shri Vijay Kumar Gupta and its Authorized Signatory Shri Kailash Gupta arrayed as respondent nos.2 to 4 respectively for dishonour of cheques issued on behalf of the respondent no.1 allegedly by the respondent nos.2 to 4 all in favour of the complainant arrayed as the petitioner herein vide cheque bearing no.556029 dated 10.01.2012 for a sum of Rs.1,24,99,995/-, for dishonour of cheque bearing No.556035 dated 10.01.2012 for a sum of Rs.13,60,00,000/- and dishonour of cheque bearing No.556028 dated 10.10.2011 for a sum of Rs.2,25,00,000/- as mentioned in the respective complaints.

4. As per averments made in each of the complaints, the said cheques were presented for encashment at New Delhi and were returned unpaid at New Delhi and the intimation of the return of the said cheques as unpaid was received by the complainant at New Delhi. As per averments in the complaints, which are identical, it was stated that the office of the accused no.1 i.e. of the respondent no.1 herein was situated at Delhi and that the legal notice was issued from New Delhi and it was submitted that the cause of action for institution of the complaints arose and lay within the jurisdiction of the trial Court at New Delhi.

5. Vide order dated 21.08.2015, the learned trial Court observed to the effect that the facts of the complaint revealed that the complainant had deposited the cheques for encashment in his account maintained with the ICICI Bank, Base Branch, 612, Ground Floor, Opp. Rani Mill, Delhi Road, Meerut-250002, U.P. and that as per the complaint, the payee bank is situated within the jurisdiction of Meerut, U.P., which falls within the jurisdiction of District Court, Meerut, U.P. and

thus in terms of the Negotiable Instruments (Amendment) Ordinance, 2015, which came into force on 15.06.2015 with reference to the Clause 3(2) and Clause 4 thereof which are as under:

“Clause 3(2)

The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction,-

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Clause 4

142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”,

the learned trial Court observed to the effect that in view of the said referred provisions, the complaint was required to be transferred to the Court having jurisdiction under Sub-section (2) of Section 142 of the Negotiable Instruments Act, 1881 and the matter was directed to be placed before the learned CMM for the needful and appropriate directions on 07.10.2015.

6. As per averments made in the petition, on 07.10.2015, when the matter was listed before the learned CMM for transfer, the counsel for the respondent no.1 appeared and put forth that he was appearing for the complainant and stated that he was not present when the order dated 12.08.2015 was passed and that the Branch of the complainant Bank was situated in Delhi and the learned CMM thus permitted the facts to be placed before the learned MM on 15.10.2015.

7. The said order dated 15.10.2015 of the learned trial Court brings forth categorically that the learned trial Court has observed that it passed the order for transfer of the case in terms of the then latest Ordinance i.e. Negotiable Instruments (Amendment) Ordinance, 2015 and the learned trial Court has further observed to the effect that it had

considered the submission of both sides and that it had become *functuous officio* with the order dated 21.08.2015 having attained finality and could not review its own order.

8. The Revisional Court observed vide para 9 of the impugned order to the effect:-

“9. Having heard the arguments of both the parties and taking into consideration the fact that since amendment vide Section 142 A (1), Amendment Act of the Negotiable Instruments (Amendment) Second Ordinance, 7 of 2015, the jurisdiction has been restored to the place where the cheque was presented by the complainant. I have gone through the Negotiable Instruments (Amendment) Ordinance, 2015, the relevant sections 3 and 4 of the Ordinance, 2015 are reproduced verbatim which are as under:-

"3. In the principal Act, section 142 shall be numbered as sub section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely;—

"(2) The offence under section 138 shall be Inquired Into and tried only by a court within whose local Jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) If the cheque is presented for payment by the payee or holder in due course otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder In due course, then, the cheque shall be deemed to have been delivered to the branch of the bank In which the payee or holder In due course, as the case may be, maintains the account."

4. In the principal Act, after section 142, the following section shall be inserted, namely;—

"142A. (1) Notwithstanding anything contained In the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before It, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Ordinance, 2015 shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as If that sub-section had been in force at all material times."

In judgment "M/s Escorts Ltd. v. Rama Mukherjee - 2013 (3) DCR 1 Supreme Court of India", it has been observed that:-

"5. It Is apparent, that the conclusion drawn. by the High Court, In the Impugned order dated 27.4.2012, is not in consonance with the decision rendered by this Court In Nishant Aggarwal's case (supra). Therein it has been concluded, that the Court within the Jurisdiction whereof, the dishonoured cheque was presented for encashment, would have the Jurisdiction to entertain the complaint filed under Section 138 of the Negotiable Instruments Act.

7. In view of the above, having taken into consideration the factual position noticed by the High Court In paragraph 13 of the impugned judgment, we are of the view, that the High Court erred in concluding that the courts at Delhi, did not have the jurisdiction to try the petition filed by the appellant under Section 138 of the Negotiable Instruments Act. The impugned order dated 27.4.2012 passed by the High Court is accordingly liable to be set aside. The same is, therefore, hereby set aside."

and thus observed to the effect that as per returning memo dated 03.04.2012, the complaint had its account at the Jhandewalan Branch,

New Delhi wherein the cheques were presented and thus the impugned orders dated 21.08.2015 & 15.10.2015 were set aside.

9. The contention raised on behalf of the petitioner herein is to the effect that when the complaint was instituted in June, 2012, the territorial jurisdiction lay with the Court at Delhi in terms of the verdict of the Hon'ble Supreme Court in ***K. Bhaskaran vs. Sankaran Vaidhyan Balan and Anr. AIR 1999 SC 3762*** wherein it was observed to the effect:-

"14. The offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice.

....
16. Thus it is clear, if the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done. As the amplitude stands so widened and so expansive it is an idle exercise to raise jurisdictional question regarding the offence under Section 138 of the Act."

10. Reference was also made by the petitioner to the verdict of the Hon'ble Supreme Court in ***Harman Electronics Pvt. Ltd. vs. National Panasonic India Pvt. Ltd. (2009) 1 SCC 720***, which clarified the same

and the verdict of the Hon'ble Supreme Court in ***Dashrath Rupsingh Rathod Vs. State of Maharashtra and Anr.*** (Criminal Appeal No.2287/2009) which varied the same wherein it had been laid down that the Court where the account of the accused i.e. of the drawer was maintained, would be the Court having territorial jurisdiction in the matter.

11. The Negotiable Instruments (Amendment) Ordinance, 2015 of June, 2015 however, conferred the exclusive jurisdiction at the place where the complainant maintains its account and explanation to Section 142 (2) thereof made it expressly clear that where a cheque was delivered for collection to any branch of the bank of the payee or holder in due course, the cheque would be deemed to have been delivered to the branch of the Bank in which the payee or holder in due course, as the case may be, maintains the account and thus, it has been submitted on behalf of the petitioner that the learned trial Court in its enquiry to determine the place where the account was actually maintained, took into account the statement of the account duly evidencing the eventual debit and credit entries with regard to the cheques in question and the factum that the account of the complainant was situated at the Base Branch at Meerut, U.P., thus directed the transfer of the complaints to the Meerut, UP where the complainant maintains its account.

12. The petitioner i.e. the complainant of the three complaint cases has placed on record the copy of the certificate issued by the ICICI Bank Limited, Meerut, U.P. dated 27.10.2015, which certifies that the petitioner herein maintained a current account bearing

No.036805002623 with the ICICI Bank branch situated at Plot No.612, Opp. Rani Mill, Near Baghpat Gate, Delhi Road, Meerut, U.P. and further certifies that the petitioner had deposited cheque bearing no. 556029 for a sum of Rs.1,24,99,995/-, cheque bearing No.556035 for a sum of Rs.13,60,00,000/- and cheque bearing No.556028 for a sum of Rs.2,25,00,000/-, all drawn on Citi Bank, Delhi for collection but the same were returned unpaid by the paying banker on 03.04.2012 mentioning the reason 'account closed'. The copy of the summary of accounts of the petitioner in relation to the account bearing no. 036805002623 was also placed on record by the petitioner, which shows the account of the petitioner to be maintained at the Base Branch, 612, Ground Floor, Opp. Rani Mill, Delhi Road, Meerut-250002, U.P. and shows the rejection of the three cheques bearing nos. 556029, 556035 and 556028 with the account of the drawer being shown to have been closed.

13. It is apparent thus that the complainant's base branch of its bank is situated at 612, Ground Floor, Opp. Rani Mill, Delhi Road, Meerut-250002, U.P.

14. In terms of Section 142 (2)(a) of the Negotiable Instruments Act, 1881 which provides as follows:

"If the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated."

the branch of the Bank where the payee or holder in due course maintains the account, is the place where the offence under Section

138 of the Negotiable Instruments Act, 1881 can be enquired into and tried **exclusively** by the user of the word ‘**only**’.

15. Section 142 A of the Negotiable Instruments Act, 1881 inserted on 15.06.2015 reads to the effect:

“Validation for transfer of pending cases- 142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction of any court, all cases transferred to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015, shall be deemed to have been transferred under this Act, as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1) and such complaint is pending in that court, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were delivered for collection or presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section (2) of section 142, as amended by the Negotiable Instruments (Amendment)

Ordinance, 2015, before which the first case was filed and is pending, as if that sub-section had been in force at all material times.”

16. It is thus apparent in view of the verdict of the Hon’ble Supreme Court in ***Bridgstone India Pvt. Ltd. Vs. Inderpal Singh (2016) 2 SCC 75*** as observed in para 10 thereof, which observes to the effect:-

“10. In order to overcome the legal position declared by this Court in Dashrath Rupsingh Rathod's case, learned Counsel for the Appellant has drawn our attention to the Negotiable Instruments (Amendment) Second Ordinance, 2015 (hereinafter referred to as 'the Ordinance'). A perusal of Section 1(2) thereof reveals, that the Ordinance would be deemed to have come into force with effect from 15.06.2015. It is therefore pointed out to us, that the Negotiable Instruments (Amendment) Second Ordinance, 2015 is in force. Our attention was then invited to Section 3 thereof, whereby, the original Section 142 of the Negotiable Instruments Act, 1881, came to be amended, and also, Section 4 thereof, whereby, Section 142A was inserted into the Negotiable Instruments Act. Sections 3 and 4 of the Negotiable Instruments (Amendment) Second Ordinance, 2015.

.....

.....

A perusal of the amended Section 142(2), extracted above, leaves no room for any doubt, specially in view of the explanation thereunder, that with reference to an offence Under Section 138 of the Negotiable Instruments Act, 1881, the place where a cheque is delivered for collection i.e. the branch of the bank of the payee or holder in due course, where the drawee maintains an account, would be determinative of the place of territorial jurisdiction.”
(emphasis supplied)

and that thus the territorial jurisdiction is to be determined by the place where the drawee maintains an account, which is the place where the territorial jurisdiction arises in terms of Section 142(2) of the Negotiable Instruments Act, 1881 and that the provisions of the Code of Criminal Procedure, 1973 have to give way to the provisions of the Negotiable Instruments Act, 1881 on account of the non obstante clause sub-section (1) of Section 142 A as laid down vide para 11 of the said verdict of the Hon'ble Supreme Court. As per observations in para 13 of the said verdict, the provisions of the Negotiable Instruments (Amendment) Ordinance, 2015 (Ordinance 06/2015). As per Section 142 A(1) of the Negotiable Instruments Act, 1881, all cases transferred to the Court having jurisdiction under Sub-Section (2) of Section 142, as amended by the Negotiable Instruments (Amendment) Ordinance, 2015 shall be deemed to have been transferred under the said Ordinance, as if that sub-section had been in force at all material times and thus, it was observed vide para 13 by the Hon'ble Supreme Court in *Bridgstone (Supra)* that the Section 142A (1) of the Negotiable Instruments Act, 1881 gives retrospectivity to Section 142(2) of the Negotiable Instruments Act, 1881.

17. The verdict of this Court in *Liugong India Pvt. Ltd. Vs. State (Govt. of NCT of Delhi) & Ors. 2018 VIII AD (Delhi) 285* and *Pankaj Gupta Vs. Govt. of NCT of Delhi*, a verdict dated 13.10.2015 in Crl.M.C.439/2015 which bring forth the retrospective applicability of Section 142 (2) of the Negotiable Instruments Act, 1881 in terms of

Section 142A(1) makes it apparent that in the circumstances of the instant case, the territorial jurisdiction to try the complaint cases under Section 138 of the Negotiable Instruments Act, 1881 in relation to the three cheques issued on behalf of the respondent no.1, the details of which have already been adverted to hereinabove, lies with the concerned Court at Meerut, U.P.

18. The three petitions are allowed accordingly and the impugned order dated 22.03.2016 of the learned ASJ-03, Patiala House Courts, New Delhi is set aside as it is apparently not in consonance with the law and the orders dated 21.08.2015 and 15.10.2015 of the learned MM-05, New Delhi District, Patiala House Courts, New Delhi in Complaint Case Nos.343/1/2014, 349/1/2014 and 350/1/2014 are restored.

19. The learned CMM, Patiala House Courts, New Delhi is directed to transfer the records of the complaint cases to the concerned CMM at Meerut, U.P. within a period of three weeks of the receipt of this order.

ANU MALHOTRA, J.

MAY 20th, 2019/vm