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*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Judgment delivered on: 12.03.2018

+ CRL.M.C. 4527/2014

M/S TEXCO

..... Petitioner

versus

M/S BATS APPARELS LTD & ANR

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Nitin Dahiya, Advocate.

For the Respondents : Mr. P. Sureshan, Advocate.

CORAM:-

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

12.03.2018

SANJEEV SACHDEVA, J. (ORAL)

1. The petitioner impugns order dated 22.04.2014 of the Revisional Court, whereby, the revision petition, filed by the respondent, impugning the summoning order dated 01.07.2011, was allowed and the complaint filed by the petitioner was dismissed on the ground that the statutory notice under section 138 of the negotiable Instruments Act, 1881 (hereinafter referred to as 'the Act'), was issued belatedly.

2. The petitioner filed a complaint alleging that the respondents had committed an offence under Section 138 of the Act. The

intimation with regard to dishonour of the cheque, issued by the respondent, was received by the petitioner on 23.12.2006 and the statutory notice under Section 138 of the Act was issued on 22.01.2007.

3. The contention of the respondents was that the notice was required to be issued within a period of thirty days whereas the notice had been issued on the 31st day.

4. It was contended by the petitioner that the date on which intimation was received, being the date when the cause of action occurred, was to be excluded in terms of the Section 9 of the General Clauses Act, 1897.

5. This was controverted by the respondents contending that since the term used was ‘within 30 days *of* the receipt of information’ and not ‘within 30 days *from* the receipt of information’, the first date i.e. 23.12.2006 was to be included in the computation of the period of 30 days.

6. The Revisional Court relying on the decision of the Supreme Court in *Shiv Kumar vs. Natarajan*: MANU/SC/1013/2009 held that the notice under Section 138 of the Act having been issued on the 31st day, which is calculable by including the date on which the intimation is received, the complaint was *ex facie* barred by limitation and, accordingly, the revision petition was allowed and the complaint was

dismissed on the ground that the statutory notice had been issued beyond the period of prescribed by the Act.

7. Learned counsel for the petitioner submits that the Revisional Court had erred in relying on the decision in *Shiv Kumar* (supra) as the said judgment is a decision referred by two judges, whereas a three judge bench in *Econ Antri Limited vs. Rom Industries Limited and Another*: 2014 11 SCC 769, after considering the difference of opinion in two judgments of the Supreme Court specifically held that the day on which the cause of action arises i.e. the date of receipt of information, should be excluded.

8. The questions that arise for consideration in this case are; whether Section 9 of the General Clauses Act, 1897, is applicable to the statutory notice under section 138 of the Act? & whether the day on which the information is received by the complainant from the bank that the cheque has been dishonoured is to be included or excluded while computing the 30-day period prescribed for issuing the statutory notice?

9. The petitioner received information of dishonour of the cheque on 23.12.2006. The notice was issued on 22.01.2007. If the said date (i.e. 23.12.2006) is to be included in the computation, then 22.01.2007 was the 31st day and notice would be beyond the prescribed period and if the said date is excluded then 22.01.2007 was the 30th day and notice would be within time.

10. The Supreme Court in *Econ Antri Limited* (supra), *inter alia*, held as under:-

“18. Undoubtedly, the view taken in *SIL Import USA* runs counter to the view taken in *Saketh*. What persuaded this Court in *Saketh* to take the view that in computing time, the rule is to exclude the first day and include the last can be understood if we have a look at the English cases which have been referred to in the passage quoted therein from Haru Das Gupta.

28. Counsel, however, submitted that using two different words ‘from’ and ‘of’ in Section 138 at different places clarifies the intention of the legislature to convey different meanings by the said words. He submitted that the word ‘of’ occurring in Sections 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word ‘from’ occurring in Section 138(a) of the N.I. Act. The word ‘from’ may be taken as implying exclusion of the date in question and that may well be governed by the General Clauses Act, 1897. However, the word ‘of’ is different and needs to be interpreted to include the starting day of the commencement of the prescribed period. It is not governed by Section 9 of the General Clauses Act 1897. Thus, according to learned counsel, for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting date on which the cause of action arises should be included for computing the period of 30 days.

29. We are not impressed by his submission.....

34. *As the Limitation Act is held to be not applicable to the NI Act, drawing parallel from Tarun Prasad Chatterjee where the Limitation Act was held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the present case that while calculating the period of one month which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the use of the two different words 'from' and 'of' in Section 138 at different places indicates the intention of the legislature to convey different meanings by the said words.*
39. *In view of the above, it is not possible to hold that the word 'of' occurring in Section 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word 'from' occurring in Section 138(a) of the NI Act; and that for the purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in Fallon Ex parte the words 'of', 'from' and 'after' may, in a given case, mean really the same thing. As stated in Stroud's Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), the word 'of' is sometimes equivalent of 'after'.*

42. *Having considered the question of law involved in this case in proper perspective, in light of relevant judgments, we are of the opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of*

action arose. We hold that SIL Import, USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly.”

(underlining supplied)

11. The Supreme Court in *Econ Antri Limited* (supra) has held that the words ‘from’ and ‘of’ used in section 138 convey the same meaning i.e. ‘after’ and accordingly the date on which the cause of action arises has to be excluded while calculating the period of limitation under Section 138 as well as 142 of the Act.

12. Seen from that perspective, the date on which the petitioner received the information of the dishonour of the cheque (i.e. 23.12.2006) is to be excluded for the purposes of computing the period of 30 days available under the Act for issuance of notice. On excluding the date 23.12.2006, from considering, it is seen that the notice issued on 22.01.2007 has been issued on the 30th day, which would bring the said notice within the period prescribed.

13. Though *Shiv Kumar* (supra) was not specifically considered by the Supreme Court in *Econ Antri Limited* (supra), however the Supreme Court has in paragraph 42 (supra) specifically stated that “*Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh by this Court, which is confirmed*

by us, do not lay down the correct law on the question involved in this reference.”

14. The Revisional Court has clearly erred in its decision and has incorrectly relied on *Shiv Kumar* (supra) and included the first date for computing the period of limitation.

15. In view of the above, the petition is allowed. The impugned order dated 22.04.2014 is, accordingly, set aside. The complaint is restored to the file of the Trial Court.

16. Since the respondents had challenged the summoning order before the Revisional Court, list the complaint before the concerned Trial Court on 03.04.2018, for the Trial Court to issue formal orders for summoning the respondents.

17. Keeping in view that the said cheque was dishonoured in the year 2006 and nearly 12 years have passed, the Trial Court is directed to endeavour to expedite the disposal of the case.

18. Order *Dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

March 12, 2018
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