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

\+ CRL.L.P. 386/2016

GURPARSHAD NARAINDAS SATSANGI ..... Petitioner

Represented by: Mr. G.P. Thareja, Mr. Satyam Thareja and Mr. Sushant Sharma, Advocates.

versus

RAM CHANDRA HARI RAM SAHNI ..... Respondent

Represented by: Mr. Amarjeet Rai and Mr. Kulbhushan Arora, Advocates.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% 16.04.2018

Crl. M.A. No. 11485/2016 (Delay)

For the reasons stated in the application, delay of 67 days in filing the leave to appeal petition is condoned.

Application is disposed of.

CRL.L.P. 386/2016

1. Petitioner filed complaint No. CC No. 2808/1/12 against the respondent under Section 138 of Negotiable Instruments Act, 1881 (in short 'NI Act') alleging that in discharge of his liability arising out of the Leave and License Agreement dated 20th May, 2010 duly executed by the respondent in respect of premises situated at 4, Mesant Road, Near Cotton Green, Sewri, Mumbai-400 033 (in short 'the premises') respondent issued cheque bearing No.45321 dated 7th April, 2012 for a sum of ₹1,17,700/-. A total of 33 post dated cheques were issued out of which only 7 cheques were

encashed and for the other remaining 26 cheques, respondent stopped payment and thus when the cheque was presented for encashment it was returned with the remarks 'Stop Payment' vide returning memo dated 9th April, 2012. Petitioner issued a legal demand notice dated 19th May, 2012 through Registered Post but the respondent failed to make the payment. Hence the complaint.

2. To prove his case the petitioner examined himself as CW-1 and tendered his evidence by way of an affidavit as CW-1/A and also exhibited copy of the Leave and License Agreement as Ex.C-1, original cheque as Ex. C-2, return memo and copy of the legal demand notice. Further during cross-examination he also proved the notice dated 16th September, 2014 issued by Mumbai Port Trust as Ex. C2/X. He was also confronted with the copy of the judgment of the Small Causes Court, complaint under Section 420/406/506 IPC filed by respondent against the petitioner in Mumbai vide Ex. CW-1/D2 and copy of notice dated 21st May, 2012 sent to the petitioner as Ex.CW-1/D3.

Respondent in his statement recorded under Section 313 Cr.P.C. admitted that he executed the leave and license agreement with the petitioner and issued 33 blank cheques. He also stated that he had stopped the payment of 11 cheques and the petitioner returned 6 out of those 33 cheques. Respondent who examined himself as DW-1 stated that the petitioner never handed over the possession of premises and thus he had no liability to pay the cheque amounts. To prove his case respondent exhibited copies of letters dated 12th January, 2011 and 21st February, 2012 for stopping payment of cheque vide Ex.DW-1/2 and DW-1/4, statement of accounts

Ex.DW-1/3, copy of the application written to the Mumbai Port Trust and reply thereof as Ex.DW-1/5 and copy of the plaint filed by respondent as Ex.DW-1/6.

3. Case of the petitioner was that he had handed over the possession of the questioned premises on execution of the agreement Ex.C1 and that the version of respondent that he sent his labourer to take possession of the premises who were stopped by four persons from the neighbourhood was wrong for the reason the respondent himself admitted that he had stored his goods in the premises which shows that he had taken over the possession of the premises.

4. From the documents placed on record, it is admitted that the Mumbai Port Trust executed a Lease Agreement dated 17th May, 1949 of plot No. 43255-7/9 sq. yards of land on Mazagon-Sewri Reclamation Estate in favour of New Era Warehousing Company Ltd. which further executed an Indenture of Lease dated 3rd April, 1955 in favour of Prem Dass Narain Dass Satsangi and Gurparshad Narain Dass Satsangi, the complainant. Further the complainant admitted in his cross-examination that he let out shed Nos. 9, 10, and 11 of property bearing No. 4, Mesant Road, Near Cotton Green, Sewri Mumbai and not the entire property bearing No. 4, Mesant Road, Near Cotton Green, Sewri Mumbai as mentioned in the Leave and License agreement. Further complainant also admitted that Mumbai Port Trust executed a lease agreement in favour of New Era Warehousing Company Ltd. only for thirty years starting from 1950 and the said lease agreement was not renewed after expiry of thirty years, even though the application for renewal was made because of the number of cases pending between Mumbai

Port Trust and New Era Warehousing Company Ltd. in the Hon'ble Supreme Court. Thus New Era Warehousing Company Ltd. not having renewed the Leave and License Agreement after thirty years from 1950 it had no authority to execute a Leave and License Agreement (Ex.C-1) in the year 2010 with the respondent. The complainant had also admitted that he neither took the permission nor intimated to Mumbai Port Trust for execution of Leave and License Agreement (Ex. C-1). Further the decree of the Court of Small Causes in Mumbai in Suit No. 149/180 of 1987 showed that a decree of eviction was passed against the petitioner on 13th December, 2005, which fact was also proved by DW-2 an official of Mumbai Port Trust.

5. Main argument of learned counsel for the petitioner was that the respondent had admitted that his goods were lying stored in the premises. The only admission of respondent was that some of the goods were sent there and were kept outside. In the entire agreement Ex.C-1 there is no clause that possession of the premises has been handed over to the reference and the only clause is that respondent would return back the vacant and peaceful possession of the premises to the licensor on 19th February, 2013. The same does not indicate that vacant, peaceful possession of the premises was handed over to the respondent.

6. Considering the evidence on record, the learned Trial Court held that the petitioner failed to prove that there was any legal liability of the respondent to pay the cheque amount and dismissing the complaints acquitted the respondent. For the facts noted above and from the evidence on record, it is evident that the petitioner led no evidence to prove when he

handed over the possession of the premises was handed over to the respondent, merely because some of the goods were stored by the respondent in the passage blocked by the stones it cannot be said that the premises in question were handed over to the respondent and thus he had a legal liability to pay the cheque amounts, pursuant to the Lease and License Agreement (Ex. C-1). Finding of the learned Trial Court is neither illegal nor perverse warranting interference.

7. Leave to appeal petition is dismissed.

8. Trial Court record be sent back.

MUKTA GUPTA, J.

APRIL 16, 2018
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