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

\+ CRL. L.P. 54/2015

RAJEEV GOYEL ..... Petitioner

Through: Mr. Sunil Kumar Jangra, Advocate.

Versus

ASHOK SHARMA .....Respondent

Through: Ms. Aastha Gupta, Advocate.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **04.07.2018**

<u>CRL. M.A. 1737/2015(for condonation of delay in re-filing)</u>

This application seeks condonation of 215 days delay in re-filing the petition on account of the petitioner's having pursued a 'Criminal Appeal' instead of a 'Criminal Leave Petition' against the impugned order. The said appeal was withdrawn on 07.11.2014 with liberty to file the Leave Petition. The present petition was filed after a delay of 215 days. It is the petitioner's case that for the erroneous legal advice, whereby he pursued an appeal instead of a Leave Petition, he should not be made remediless.

In view of the above, in the interest of justice, the application is allowed. The delay of 215 days in re-filing the petition is condoned.

The application stands disposed-off.

<u>CRL. L.P. 54/2015</u>

This Leave Petition impugns an order dated 25.02.2014 dismissing the petitioner's complaint under section 138 of the Negotiable Instruments

Act,1881 ("NI Act"). This case pertains to a cheque of Rs. 3 lacs which upon presentation, was dishonoured with the remarks that "*funds were insufficient*".

The presumption under section 139 of the NI Act is that the cheque is valid, however, such presumption is rebuttable. The respondent/accused had led evidence to the effect that the said cheque was issued as security for repayment of amounts taken as loan from the petitioner. He himself deposed as a witness alongwith his wife-Ms. Deepa Sharma and one Mr. Umesh Chand Sharma, both of whom had corroborated his version, that he had paid Rs. 1 lac and Rs. 1.50 lacs to the complainant. Ms. Deepa Sharma went on to say that her husband, the petitioner, had asked for a receipt from the respondent but the latter declined to issue it; their evidence remains unshaken. The respondent had set up a rebuttable presumption, a probable defence that Rs. 3 lacs was not repayable, therefore, the cheque for Rs. 3 lacs could not be said to be in discharge of a debt or other liability.

The Trial Court has reasoned *inter alia*:-

> "*Occurrence of any event is a fact which may be proved by oral account of any person who has seen such event. This can be done in terms of section 60 of the Indian Evidence Act. If a transaction of giving and receiving of certain amount takes place between two persons as giver and receiver, certainly this fact can be established by oral testimony either of giver or of receiver. Furthermore, it can also be established by and testimony of any other person who claims that the said event occurred in his presence We will discuss the story projected by the complainant in later portion of this discussion. But presently, we can see the claim made by the accused to maintain the continuity.*
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> *5.1. As indicated above in Paragraph 3.1 we have to accept that Rs.2.5 lacs at least was paid by the accused in the*

year 2007 to the complainant. In such circumstances, even if we leave the other payments claimed by the accused from consideration, the complainant cannot maintain the present case as the same should be hit by Section 56 of Negotiable Instruments Act.

5.2. It is clear that tire cheque was presented by the complainant somewhere in October 2007 whereas the accused has established his claim that by the September 2007 he had repaid at least Rs.2.5 lacs. In such circumstances, the complainant could not have presented the cheque in question for the entire amount mentioned in the same as till such time, the liability already got reduced on account of payment made by the accused. The complainant cannot maintain a case u/s 138 NI Act on such cheque, (see judgments of Hon'ble High Court of Delhi in M/s Alliance Infrastructure Project Pvt. Ltd. and Ors. Vs Vinay Mittal Crl. M.C. No.2224/2009 dated 18.01.2010 & Kassa Investment (P) Ltd. Vs Om Prakash Jain Crl. L. P. No.307/201 dated 04.07.2012)".

The respondent has been able to rebut the presumption under section 139 of NI Act. Therefore the negotiable instrument, i.e., bill of exchange could not be said to be in discharge of a liability.

The Court finds no reason to interfere with the impugned order. Accordingly the petition is dismissed.

NAJMI WAZIRI, J.

JULY 04, 2018
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