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

% **Reserved on: 14th December, 2018**
Pronounced on: 20th December, 2018

\+ **CM(M) 1019/2018, CM Appl.Nos.35339/2018, 35341/2018, 40748/2018**

SONIA PASRICHA ..... Petitioner
Through: Mr.Rajiv Talwar, Mr.B.K.Patra, Mr.Sandeep Khatri and Ms.Prabhkeen Kaur, Advocates

versus

ROHIT DUGGAL ..... Respondent
Through: Mr.Harshad V Hameed and Mr.Muammed Siddick, Advocates.

CORAM:
HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. This petition challenges an order dated 04.08.2018 passed in a summary suit under Order XXXVII CPC viz. CS No.150/2018 where the learned Trial Court while granting leave to defend to the petitioner has directed the petitioner to deposit 50% of the suit amount as a condition precedent for grant of such leave.

2. The petitioner has duly complied with the deposit condition as directed. During the course of arguments the learned counsel for the petitioner has alleged the averments made in the plaint are highly improbable since the respondent was never the chartered accountant of the petitioner herein and in fact the chartered accountants of petitioner

was a partnership firm viz. M/s.Moitra Duggal and Associates, of which the respondent was one of its partners. It is the case of the petitioner that the cheque in question was never issued to the respondent qua any alleged professional fee and even otherwise, a chartered accountant could never have raised a bill of such an astronomical amount of `76.00 Lac qua any alleged professional fee for preparing or settling some alleged title documents.

3. The learned counsel for the petitioner has referred to the bill dated 18.03.2015 wherein the respondent has allegedly charged his professional fees for complete turnkey solutions for two properties viz ***a)*** Mashobra Khasras No. 247, 248, 249 & 251 Mauja Sharai, Shimla, Himachal Pradesh; and ***b)*** Flat 1412 A, Building 14, DLF City DLF Beverley Park II, Phase-II, Gurgaon - 122 022. It is mentioned in the bill itself the assignment includes rectification of title documents, regularization of the title deeds and revenue records, identification of the potential buyers and execution of the transfer documents and `4.00 Lac for out of pocket expenses including traveling, boarding and lodging and secretarial services for both the above properties.

4. The learned counsel for the petitioner submitted the property at Shimla was already sold in the year 2013 and was not even in existence in 2015 when the alleged bill was raised and that the DLF property was never owned by the petitioner; hence there was no occasion for raising such a huge bill. It was alleged the respondent been a chartered accountant of the petitioner had misused blank signed papers/ cheques

handed over to one Amitosh Moitra, a patner in M/s.Moitra Duggal and Associates, chartered accountants. It was alleged the petitioner had never issued any cheque or executed any promissory note in favour of the respondent. It is alleged charging such an huge amount as professional fee, even otherwise, amount to professional misconduct.

5. On the other hand, the learned counsel for the respondent has raised three issues viz.; ***a)*** petition under Article 227 of the Constitution is not maintainable; ***b)*** the leave to defend application was not filed after the service of the summons for judgment but prior to it; and ***c)*** the admissions made by the petitioner in complaint case under Section 138 Negotiable Instruments Act, 1881 (NI Act) lodged by respondent against petitioner shall go against her.

6. In support of his first contention, the learned counsel for the respondent has referred to a decision in *Spicejet Limited vs Arun Kumar* CM (M) No.1269/2017 decided on 10.11.2017 wherein this Court has noted:-

> *"5. I have enquired from the counsel for the petitioner/plaintiff, as to how a petition under Article 227 of the Constitution of India is maintainable with respect to the aforesaid grievance. The grievance is redressable under the CPC by preferring a Revision Petition under Section 115 of CPC.*
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> *xxx*
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> *7. The law in this regard is well settled. Against an order of grant of leave to defend and for the grievance of the leave to defend application having not been dismissed, a Revision Petition under Section 115 of CPC lies. Mechelec Engineers & Manufacturers Vs. Basic Equipment Corporation (1976) 4 SCC 687 was also a case arising from exercise of jurisdiction under Section 115 of the CPC by this Court. Supreme Court held that this Court erred in interfering with the discretionary order and it is only in cases where the defence is patently dishonest or so unreasonable that could not be reasonably be expected to succeed that the exercise of discretion by the Trial Court to grant leave unconditionally may be questioned. Reference may also be made to Siri Krishan Bhardwaj Vs. Manohar Lal Gupta AIR 1977 Delhi 226 (DB). It has been held by the Supreme Court in Sadhana Lodh Vs. National*

Insurance Co. Ltd. (2003) 3 SCC 524 that if a remedy under CPC is available, a petition under Article 227 of the Constitution of India, does not lie.”

7. Regarding contention ***b)*** above, it was argued the application for summons for judgment was filed on 15.05.2018 and summons were issued on 25.05.2018 for the next date viz. 04.08.2018 but however, the leave to defend application was filed in May 2018 i.e. prior to service of the application for Summons for Judgment upon the petitioner herein. I do not think it is a big issue since the application for leave to defend, if was filed prior in time, can very well be adopted later on issuance for summons for judgment, which in fact has also been done in this case.

8. Coming to contention ***c)*** the learned counsel for the respondent has taken me through the legal notice dated 16.06.2015 issued by the respondent to the petitioner under Section 138 NI Act on dishonor of the cheque wherein the respondent had categorically averred the dealings between the petitioner and the respondent and also that an amount of `76.00 Lac was due. The issuance of the cheque and the execution of promissory note were both mentioned in said notice. It was duly served upon the petitioner, but no reply was filed by her. Further the petitioner in response to notice under Section 251 Criminal Procedure Code in the proceedings under Section 138 NI Act, had admitted the respondent being her chartered accountant for 15-20 years and that since she had to travel a lot she used to handover some blank signed cheques to the respondent to pay her tax liability and other dues in her absence and she had also given certain signed blank papers for the same purpose. However, she did not specifically denied the execution of the work by the

respondent for which the invoice dated 18.03.2015 was raised by the respondent herein.

9. The learned counsel for the respondent then referred to paras No.6 & 7 of the leave to defend application (page No.162) filed by the petitioner wherein she asserted the respondent is a partner of M/s.Moitra Duggal and Associates and the cheque in question was never issued and that she had handed over certain signed blank papers and the cheque in question to one Amitosh Moitra of the said firm, so that Sh.Moitra, chartered accountant could deal with her tax related issues and pay necessary tax(es). This was against the statement made by her to the notice under Section 251 Cr P C wherein she alleged handing over of those signed cheques and papers not to Amitosh Moitra but to Rohit Duggal viz., the respondent herein.

10. The petitioner appears to be an educated lady. As a prudent person she is not supposed to hand over signed blank papers/promissory notes /blank signed cheques to any one unless she owe money to such person hence it has been rightly held by the learned Trial Court that the defence of the petitioner appears to be highly improbable. Even as per Section 91/92 of the Indian Evidence Act, 1872 no contrary oral version is admissible unless fraud and misrepresentation is alleged, which is missing in this case as petitioner had failed to lodge any complaint to the police. The learned Trial Court also notes section 118 NI Act raises a presumption of existence of a consideration for issuance of cheque and hence direction to deposit 50% of the suit amount was a justified order

and needs no interference. Of course, the deposit so made by the petitioner shall be subject to the final outcome of trial.

11. I see no irregularity or infirmity in the impugned order, hence the petition is dismissed, with pending application(s).

YOGESH KHANNA, J.

DECEMBER 20, 2018

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