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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 28th September, 2018

+ CRL.M.C. 3689/2015

MYSTIC MONK DESIGN PVT LTD

..... Petitioner

Through: Ms. Biji Rajesh, Mr. Diwankar
Sethi & Mr. Nayan Dubey,
Advs.

versus

M/S H.S.FASHION

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The petitioner had filed a criminal complaint (CC No. 769/1), alleging offence under Section 138 of Negotiable Instruments Act, 1881 having been committed by the respondent on account of there being no payment tendered in the wake of notice of demand dated 25.08.2010 issued and dispatched on 26.08.2010 after return of six cheques without payment by the bank drawn by the respondent, the said cheques having been issued statedly by the respondent for money due. The cheques were returned unpaid by the banker on 14.08.2010. It is an admitted case of the petitioner that the notice of demand was served on respondent on 30.08.2010 and, consequently, as per the submissions, the money was to be paid by the respondent on or before 15.09.2010, failure in which respect giving rise to cause of action for complaint to be preferred on or before 15.10.2010. The complaint

admittedly filed with delay, however, was dismissed by the Metropolitan Magistrate at the threshold, by order dated 04.08.2014, after application which had been filed therewith for condonation of delay, was dismissed.

2. The petitioner challenged the said order of the Metropolitan Magistrate in the court of Sessions by filing Criminal revision no. 38/2014. The revisional court was also not impressed and, thus, declined to interfere, holding that there was no illegality or infirmity in the view taken by the Metropolitan Magistrate and, thus, dismissed the revision petition, by its order dated 27.05.2015 which decision is under challenge by the petition at hand presented under Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.).

3. There is no denial on the part of the petitioner that the complaint was to be filed on or before 15.10.2010. Though it is claimed that the complaint was filed on 28.10.2010, copy of the complaint (annexure P-8 running from pages 80 to 89 in the paper book) shows it was prepared on 29.10.2010. That is the date indicated even in the application for condonation of delay, which was filed with the complaint (it appearing as annexure P-9 at pages 90 to 96 of the paper book).

4. The explanation for the delay offered by the petitioner has been that on the (reverse of) six cheques which were returned unpaid, there was an endorsement by Axis Bank Ltd. which bore the date 13.07.2010 the same appearing to have been scored off and another stamp dated 13.08.2010 added. Attention of this court is drawn to this

error in the endorsements by the bank on the reverse of all the six cheques. The petitioner claims that the complaint had been drafted by a counsel who had been engaged on 11.10.2010 and the complaint was sent to the court through clerk on 30.10.2010 but the court clerk, upon scrutiny, noticed the discrepancy and, thus, the complaint could not be filed on that date. It is submitted that the bank was thereafter approached whereupon it clarified by its communication dated 22.10.2010 (annexure P-7 at page 77) that the stamp impression of 13.07.2010 was “by mistake”. It is the case of the petitioner that later in terms of board resolution dated 18.10.2010 another counsel was engaged who prepared the complaint which was eventually filed on 29.10.2010 with some delay.

5. The above explanation has been rejected by the courts below and, in the opinion of this Court, rightly so. There is nothing on record, not even a shred of paper, to support the contention that a complaint had actually been prepared and drafted, by a counsel on 11.10.2010. If such a complaint had been prepared and drafted all that the petitioner required to do was to present the said document in support of the claim. On 11.10.2010, there was no occasion for any counsel to be engaged or instructed so as the complaint to have been drafted or for it to be sent for filing to the court on 13.10.2010. Having regard to the averments of the petitioner itself in ground L (page 22 of the petition), the advocate who was engaged initially was appointed on the basis of board resolution dated 18.10.2010.

Noticeably, till the stage of scrutiny by the revisional court there was no mention of any board resolution prior to the one of 18.10.2010.

6. The petition is thus found devoid of substance and is dismissed.

R.K.GAUBA, J.

SEPTEMBER 28, 2018

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