

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED:08.01.2019

CORAM:

THE HONOURABLE MR.JUSTICE V.PARTHIBAN

Cr1.R.C.No.1490 of 2018

M/s.Cosmogenic IT Solutions Private Limited
rep.by Director Operations
Mr.Dillibabu N. ... Petitioner

vs.

- 1.M/s.MC Intellect Solutions Pvt.Ltd.,
Rep.by its Directors.
- 2.M.Karthigayan
Director
M/s.MC Intellect Solutions Pvt.Ltd.,
- 3.Deepan Chakravarthi
Director,
M/s.MC Intellect Solutions Pvt.Ltd.,
- 4.R.Chandar
Director,
M/s.MC Intellect Solutions Pvt.Ltd., ... Respondents

Prayer: Petition filed under Section 397 r/w 401 of Cr.P.C. To set aside the order passed in Cr1.M.P.No.492 of 2018, dated 03.11.2018, by the Fast Track II, Metropolitan Magistrate, Egmore at Allikulam, Chennai-600 003

For Petitioner : Mr.V.V.Sairam

For Respondents : No appearance

ORDER

This criminal Revision case has been filed against the order passed by the Fast Track II, Metropolitan Magistrate, Egmore at Allikulam, in Cr1.M.P.No.492 of 2018, dated 03.11.2018, dismissing the petition filed by the petitioner/complainant seeking condonation of delay of 38 days in filing the complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as 'NI' Act).

2. According to the petitioner/complainant there was a business transaction between them and the respondent/accused and in the course of business transaction, a cheque was issued by the respondent on 10.05.2017 for a sum of Rs.17,00,551/-. The cheque was presented to the banker of the complainant and the same was returned with an endorsement 'insufficient funds'. When this was informed to the respondent/accused, a partial payment had been made. According to the revision petitioner, there were negotiations, which were going on between them and the respondent/accused in regard to the settlement of the entire dues. In view of the negotiations and also assurance given by the respondent/accused towards settlement of the entire dues, there occurred a delay in issuing statutory notice and also filing of the complaint. The delay was only 38 days as per the revision petitioner and this was explained in the petition filed seeking condonation of delay.

3. According to the learned counsel appearing for the petitioner, unfortunately, the learned Magistrate, without appreciation of the factual circumstances of the case, had dismissed the petition on the ground that the delay was not satisfactorily explained and the petitioner was not vigilant in approaching the Court in time and also sending the statutory notice. According to the learned Magistrate, the petitioner had not narrated the actual facts and failed to satisfy the Court.

4. Despite notice having been served on the respondent/accused, no one entered appearance and none appeared before this Court on the previous occasion and even today as well.

5. This Court considered the submissions made on behalf of the revision petitioner and also perused the order passed by the learned Judicial Magistrate and the materials placed on record.

6. The learned counsel for the petitioner would draw the attention of this Court to the electronic correspondences between the petitioner and the respondent/accused on 26.7.2017 and 21.08.2017, in which it is established that there indeed were many negotiations between the petitioner/complainant and the respondent/accused for settlement of the amount due to the petitioner. In these type of cases, normally the parties enter into negotiations in order to avoid litigation before the Courts and only when such negotiations fail, they ultimately resort to file complaint under Section 138 of the NI Act.

7.Unfortunately, the trial Court has failed to understand the very basic concept of negotiation, which usually takes place in such matters between the parties. The trial Court has adopted pedantic and narrow view in dismissing the petition for condonation of 38 days. The said reason as set forth by the trial Court is also contrary to the reality. In fact, in the condone delay petition it was clearly mentioned by the petitioner herein about the negotiation aspect, but unfortunately, the trial Court has miserably over looked such averments and dismissed the petition. The order passed by the trial is therefore, liable to be interfered with.

For the above said reasons, the criminal revision case is allowed and the order dated 03.11.2018 passed by the trial Court in CrI.M.P.No.492 of 2018 is hereby set aside and consequently, the petition filed in CrI.M.P.No.492 of 2018, seeking condonation of delay, is allowed.

Msk

Sd/-

Assistant Registrar(CS iii)

//True Copy//

Sub Assistant Registrar

To

1.The Fast Track II, Metropolitan Magistrate,
Egmore at Allikulam, Chennai-600 003

2.do thro'the Chief Metropolitan magistrate,
Chennai.

+1cc to Mr.V.V.Sairam , Advocate SR.No. 1732

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A.SK(19/02/2019)

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