IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

CRM-M-3866-2019 (O&M)
Date of Decision: 13.02.2019.

Sanjay Amarlal Chawla ....Petitioner.

Versus

YES Bank Limited ....Respondent.

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CORAM: HON'BLE MR. JUSTICE SHEKHER DHAWAN

Argued by: Mr. Arun Kumar, Advocate for the petitioner.

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Shekher Dhawan, J.

Present petition under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India is for setting aside the order dated 03.11.2018 (Annexure P-1) passed by learned Sessions Judge, Gurugram.

Present petition has been filed on the ground that the petitioner along with his father and mother had taken mortgage loan of Rs.7,00,00,000/- (Rupees Seven Crore) in the last quarter of 2016 from the respondent-Bank and they had mortgaged their house property bearing Flat No.1201, 12th Floor, Everest Co-operative Society Limited, Bandra West, Mumbai worth Rs.13 Crores. As per terms of the loan agreement, the petitioner was to repay the entire amount in 180 Equated Monthly Installments (for short, 'EMIs'). The petitioner has already repaid 09 EMIs amounting to Rs.50,40,000/- (Fifty Lakh Forty Thousands) and cleared the outstanding dues up to September, 2017. In the last quarter of the year 2017, the petitioner faced some financial crisis and he was unable to pay his outstanding loan amount installments. At the time of disbursement of loan amount, respondent-Bank had obtained blank cheques from the petitioner with the assurance that the same were not to be used and, in fact, the same were taken as security cheques. As soon as, there was a default by the petitioner in paying the installments, respondent-Bank presented the said security cheque No.077538 drawn from Union Bank on 27.11.2017 and after dishonour of the same, filed a complaint CIS No.1095/ 2018 dated 10.01.2018, under Section 138 of Negotiable Instruments Act (for short, 'the Act') before learned Judicial Magistrate Ist Class, Gurugram.

As per petitioner, respondent-Bank illegally presented the blank signed cheque which was taken as a security and learned Magistrate has not considered this aspect while passing the summoning order.

Learned counsel for the petitioner contended that even Revisional Authority i.e. learned Sessions Judge, Gurugram has not considered the matter in its true and legal perspective while passing the order dated 03.11.2018 and as such, the said orders are liable to be set aside.

Having considered the submissions made by learned counsel for the petitioner, there is no dispute on the basic fact that cheque No.077538 drawn from Union Bank on 27.11.2017 was duly signed by the petitioner and the said cheque was for a sum of Rs.7,00,00,000/-. The only plea taken by the petitioner is that the said cheque was a security cheque and that has been misused by the respondent-Bank. Learned Sessions Judge, Gurugram, has rightly taken the view that to take such a plea, that the cheque in question was issued as a security cheque, as a matter of defence only, which can be taken by the petitioner, while appearing in the Court and to lead the same as a defence only, but that shall not be a valid ground to set aside the summoning order passed by Judicial Magistrate Ist Class, Gurugram, on a complaint having been filed under Section 138 of the Act. Learned Sessions Judge, Gurugram has rightly placed reliance upon judgment from Hon'ble Apex Court in case ***HMT Watches Ltd. Vs. M.A. Abida,* 2015(11), SCC 776,** wherein it was observed as under:-

> *"Having heard the learned counsel for the parties, we are of the view that the accused (respondent no.1) challenged the proceedings of criminal complaint cases before the High Court, taking factual defences. Whether the cheques were given as security or not, or whether there was outstanding liability or not is a question of fact which could have been determined only by the trial court after recording evidence of the parties. In our opinion, the High Court should not have expressed its view on the disputed questions of fact in a petition under Section 482 of the Code of Criminal Procedure, to come to a conclusion that the offence is not made out. The High Court has erred in law in going into the factual aspects of the matter which were not admitted between the parties. The High Court further erred in observing that Section 138(b) of N.I. Act stood uncomplied with, even though respondent no.1 (accused) had admitted that he replied the notice issued by the complainant. Also, the fact, as to whether the signatory of demand notice was authorized by the complainant company or not, could not have been examined by the High Court in its jurisdiction under Section 482 of the Code of Criminal Procedure when such plea was controverted by the complainant before it."*

Similar view was taken by Hon'ble Apex Court in case ***Suryalakshmi Cotton Mills Ltd. vs. Rajvir Industries Ltd.,* (2008) 13, SCC, 678; *Rallis India Ltd. Vs. Podure Vidya Bhushan,* (2011)13, SCC, 88** and by this Court in ***Shalini Enterprises and another vs. Indiabulls Financial Services Ltd.,*** ***2013(2) Civil Court Cases 835 (P&H).***

In view of the above, there are no grounds to set aside the order dated 03.11.2018 passed by learned Sessions Judge, Gurugram and to quash the summoning order dated 24.05.2018 passed by Judicial Magistrate Ist Class, Gurugram. The present petition, being without any merit, stands dismissed.

(SHEKHER DHAWAN)
JUDGE

13.02.2019
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Whether speaking/ reasoned	:	Yes/ No
Whether Reportable	:	Yes/ No