

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

Sr. No.216

CRM-A-1473-MA-2018 (O&M)

Date of decision : 15.2.2019

M/s Mahindra and Mahindra Limited

..... Appellant

VERSUS

M/s Chaudhary Tractors and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE SUDHIR MITTAL

Present: Mr. J.S. Mehndiratta, Advocate, for the appellant.

SUDHIR MITTAL, J. (Oral)

This appeal has been filed by the complainant against impugned judgment dated 19.3.2018, passed by the Chief Judicial Magistrate, SAS Nagar, Mohali, whereby its complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the Act') has been dismissed.

The bare facts of the case are that the appellant had some business dealings with respondent No.1. According to complaint, accounts were finalized on 31.3.2013 and for clearance of the balance outstanding amount, cheque dated 15.5.2013 was issued. Since, the said cheque was dishonoured, the present complaint was filed.

A perusal of the aforementioned impugned judgment shows that complaint was dismissed on the ground that the evidence on record establishes that last settlement of account took place on 31.1.2008 and cheque in dispute was issued on 15.5.2015 and thus, it could not be said that the same was issued in discharge of a legally enforceable liability. It has

also been held on the basis of evidence on record that the account against

which the cheque had been issued, had become dormant in the year 2009 and the dishonour memo mentioned the reason for dishonour as the account lying dormant as well as 'insufficient funds'.

Learned counsel for the appellant submits that because the cheque in dispute was issued on 15.5.2013, it would amount to an acceptance of the liability of the accused to repay the debt and therefore, it could not have been held that the same was not issued in discharge of legally enforceable debt. It is further submitted that the evidence on record has been misread by the trial Court, in-as-much as, the dishonour memo also mentions 'insufficient funds'. Thus, the appeal be allowed and the aforementioned impugned judgment be set aside.

A careful perusal of the aforementioned impugned judgment shows that the defence of the accused is that an old cheque belonging to it has been misused by the appellant. This plea has been accepted by the trial Court on the basis of the oral as well as documentary evidence on record. No perversity has been pointed out in this finding and thus, contention of learned counsel for the appellant that the cheque having been issued on 15.5.2013, would amount to an acknowledgement of the debt, is rendered redundant. So far as, the argument regarding misreading of the evidence is concerned, the trial Court has given sufficient reasons. The primary reason for dishonour of the cheque, was the account being dormant. This finding is duly supported by evidence on record because the accused have produced evidence to show that account was lying dormant since the year 2009 and no transactions had been conducted from it resulting in diminishing of account balance. Consequently, the remark regarding insufficiency of funds was also made in the dishonour memo.

In view of the above, there is no merit in the appeal and the same is dismissed.

(SUDHIR MITTAL)
JUDGE

15.2.2019
Ramandeep Singh

Whether speaking / reasoned

Yes / No

Whether Reportable

Yes/ No