

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-A-2113-MA-2017 (O&M)

Date of Decision: 22.04.2019

NCR Chamber of Commerce and Industry

...Applicant/Appellant

Versus

Karunesh Mittal

...Respondent(s)

CORAM:- HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Vivek Lamba, Advocate for the applicant-appellant.

ANIL KSHETARPAL, J.

CRM-30313-2017

For the reasons stated in the application, which is supported by an affidavit, delay of 36 days in filing the application for grant of leave to appeal is condoned.

CM stands disposed of.

Main case

Leave to appeal has been sought against the judgment dated 29.04.2017, dismissing the complaint filed by the applicant/appellant after returning a finding that it is beyond the period of limitation as prescribed in Section 142 of the Negotiable Instruments Act, 1881 (for short 'the NI Act').

The learned court has held that on dishonor of the cheque, the demand was made through communication by way of e-mail and speed post on 01.09.2015 and thereafter the complaint was filed on 30.10.2015.

Learned counsel for the applicant-appellant has submitted that the communication sent on 01.09.2015 was not a demand notice as the applicant/company had not warned the accused of legal action on failure to pay the amount and, therefore, such communication cannot be treated as a

notice as required under Section 138 of the NI Act, 1881.

This Court has considered the submission of learned counsel and with his able assistance gone through the communication dated 01.09.2015. The operative part of the communication, which is undisputed, reads as under:-

“Sub:Bounce of cheque No.000251 dated 19.08.2015 worth Rs.1,50,000/- (Rs.One Lac Fifth Thousand only) issued in favour of NCR Chamber of Commerce and Industry Gurgaon.

Dear Sir,

As you are well aware that the cheque No.000251 dated 19.08.2015 worth Rs.1,50,000/- (Rs.One Lac Fifth Thousand only) issued in favour of NCR Chamber of Commerce and Industry Gurgaon has been bounced due to of “INSUFFICIENT FUND” (Copy Enclosed).

We informed you telephonically and by SMS many times, and advised you to transfer the payment through RTGS but even after one week the amount has not been transferred to the chamber's account. Mr.H P Yadav, President NCCI and Mr.Ravinder Bansal, Chairman Steering Committee of NCCI visited your office at Faridabad on Friday, 28th Aug 2015 specially for this reason. So, we are giving you one more opportunity to transfer the amount through RTGS. Detail of the same is given below.

Account Name: NCR CHAMBER OF COMMERCE AND INDUSTRY, Bank Account Number:205501601007708

Bank's SWIFT Code:CORPINBB2055, Bank Name: CORPORATION BANK

Branch:SECTOR 27, SUSHANT LOK BRANCH (2055), GURGAON 122002

Service Tax No.: AAATN6723HSD002, PAN NO.:AAATN6723H

We hope that you will transfer the amount of Rs.1,50,000/- (One lac Fifth Thousand only) through RTGS before 4th August

2015. If we well not receive the payment by the date, then we will take up this matter in our Executive Council Members for further course of action.”

It is apparent that through the communication reproduced above, the accused was informed of dishonor of the cheque and demand was made. The purpose of sending the communication/notice is to give an opportunity to the accused to make payment.

In the present case, it is apparent that the demand was made and opportunity was given. As per under Section 138 of the NI Act, no specific form of notice has been prescribed. Argument of learned counsel that the communication was in fact not a notice as there was no threat to take legal action if demand is not met, to be noticed and rejected because a notice under Section 138 of the NI Act is not required to be in a particular form and it is sufficient if demand has been made through the communication. The learned trial court has relied upon a judgment passed by the Hon'ble Supreme Court in the case of **Central Bank of India and another Vs Saxon Farms and others (1999) 8 SCC 221**.

In view thereof, no ground is made out to grant leave to appeal. The present application under Section 378(4) of the Code of Criminal Procedure is dismissed. Pending application(s), if any, shall also stand disposed of, in terms thereof.

22.04.2019
mks

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No