

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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CRM-A-1621-MA-2015 (O&M)

Date of decision: 22.08.2019

Suresh Kumar

..... Appellant

Versus

Birender

..... Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr. Naresh Kaushik, Advocate
for the appellant.

Mr. Rajender Singh Malik, Advocate
for the respondent.

ANIL KSHETARPAL, J. (ORAL)

In the present case, with the consent of learned counsel for the parties, arguments have been heard at length and record of the Courts below perused.

The complaint filed under Section 138 of the Negotiable Instruments Act has been dismissed on the ground that the cheque in question was dishonoured on 05.08.2014 whereas the notice demanding the amount in terms of the Section 138 of the Negotiable Instruments Act was issued on 24.07.2014. The Court has also noticed that there is overwriting at the place where date of notice has been mentioned.

On careful perusal of the notice, it is apparent that in Para 3 of the notice, reference is to bank return memo with remarks 'Funds Insufficient' dated 05.08.2014. Para 3 of the notice which is Ex.C-4 is

extracted as under:-

“That my client maintains an account with his banker, Sarva Haryana Grameen Bank, Bhalgarh, Sonapat and lastly presented the above mentioned cheque to his banker for realization and encashment. But the said cheque was returned by your banker to the banker of my client as unpaid and dishonoured with the remarks 'funds insufficient' vide return memo dated 05-08-2014.”

Still further, the trial Court has not examined the receipt of the registered notice having been sent, although, date on which it was sent is not clear but at least the month on which notice was sent is clearly visible. In this view of the matter, since the learned trial Court has dismissed the complaint on a technical ground, therefore, the judgment under challenge is set aside.

The case is remitted back to the learned trial Court to re-decide the same. Both the parties were granted one opportunity to lead further evidence before finally adjudicating upon the case.

Parties through their counsel are directed to appear before the learned trial Court on 05.09.2019.

Disposed of.

22.08.2019
D.Bansal

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned Yes / No

Whether Reportable Yes / No