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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.L.P. 145/2019, CRL.M.A. 3703-04/2019 (Exemption and delay)

INDERPAL

..... Petitioner

Through: Mr. Tarkeswar Nath, Mr. Shashwat Sagar, Advs.

versus

KRISHNA

..... Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

<u>O R D E R</u>

% **19.02.2019**

The petitioner seeks to impugn the order dated 27.09.2018 dismissing his complaint under section 138 of the Negotiable Instruments Act, 1881. It is his case that he had loaned Rs.5 lacs to the respondent. However, there is no proof of the said loan; the person who loaned the said money, too was not examined. It is stated that the respondent returned an amount of Rs.50,000/-, but, he had sought some more time and the same was granted to him but even that time was also not sufficient. In a settlement, the respondent agreed to have his wife's property sold to the petitioner. However, in the said agreement to sell/settlement document, there is no mention of the earlier alleged transaction of Rs.4.5 lacs or Rs.8 lacs which was proposed to be paid by the respondent/accused. There is no link between the two alleged transactions. The Trial Court reasoned as under:

"It is to be seen that the alleged payment made to husband of the accused herein namely Sh, Rajpal Singh has not been duly proved by the complainant. Apart from his averment to this effect, he has simply placed on record photocopy of his passbook marked as Mark X-1 to show that payment of Rs. 50,000/- by way of cheque bearing no. 248210 to Sh. Rajpal Singh was made on 01.03.2013. No efforts were made by the complainant to prove that document by way of production of the original passbook or by way of calling the record pertaining to his bank account through concerned bank official. The alleged eye witness of said transaction, Mr. Ombir was also not summoned to depose. In these circumstances, I am of the view that the alleged payment to Sh. Rajpal Sigh remains not proved, more so, when same has been specifically denied by defence which is clear from cross-examination of complainant dated 05.09.2016. As specific suggestion was put to him to the effect that neither any such cheque was encashed by the husband of accused nor any request was made by the accused (same was denied by him).

Further, as per complainant, the amount in question was paid to Sh. Rajpal (husband of the accused) whereas the Agreements to Sell dated 23.09.2013 and 27.01.2014 were executed between the complainant and accused herein. In none of these two agreements on record, it has been mentioned that the amount of Rs.4,50,000/- was so paid by the complainant to Mr. Raj Pal Singh way back on 01.03.2013 itself. Rather, it has been mentioned in the agreement to sell dated 23.09,2013 that the amount of Rs. 4,50,000/- has been so paid in cash on 20.09.2013, Even otherwise if the entire case of the complainant is assumed as having been proved then also the question remains as to whether the cheque amount i.e. Rs.8 lacs can be said to be a legally enforceable debt or other liability in terms of Section 138 of Negotiable instruments Act, 1881. As per the complainant, the amount in question was a legally enforceable liability *against the accused as the agreements to sell dated 23.09.2013 and 27.01.2014 provided for payment of double the earnest money to him on failure of accused Smt. Krishna to perform her part of the agreement. The following observations of Hon'ble Apex Court in its authoritative pronouncement in a case titled as "Fateh Chand Vs. Balkishan Das AIR 1963 SC 1405" are material for answering the aforementioned question:-*

> *"The measure of damages in the case of breach of a stipulation by way of penalty is by S.74 reasonable compensation not exceeding the penalty stipulated for In assessing damages the Court has, subject to the limit of the penalty stipulated, jurisdiction to award such compensation as it deems reasonable having regard to all the circumstances of the case. Jurisdiction of the Court to award compensation in case of breach of contract is unqualified except as to the maximum stipulated: but compensation has to be reasonable, and that imposes upon the Court duty to award compensation according to settled principles. The section undoubtedly says that the aggrieved party is entitled to receive compensation from the party who has broken the contract, whether or not actual damage or loss is proved to have been caused by the breach. Thereby it merely dispenses with proof of "actual loss or damages", it does not justify the award of compensation when in consequence of the breach no legal injury at all has resulted, because compensation for breach of contract can be awarded to make good loss or damage which naturally arose in the usual course of things, or which the parties knew when they made the contract, to be likely to result from the breach". (Emphasis supplied)*

It appears that no attempt at all has been made by the complainant to prove the actual loss or damage caused to him by alleged breach of contract by the accused. In these circumstances, accused cannot be held

> *to be liable to pay the amount to the tune of double the earnest money merely because same has been so mentioned in the agreement to sell, without anything further having been done by the complainant to so as to how he was entitled to such amount."*

The petitioner has not been able to establish a case that the cheque thus issued was in repayment of a debt or an admitted liability.

In the circumstances, the court finds no reason to interfere with the impugned order. It is accordingly, dismissed.

NAJMI WAZIRI, J

FEBRUARY 19, 2019

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