

\$~13

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

Date of decision: 19.11.2019

+ CRL.M.C. 746/2017

EMPLOYEES WELFARE FUND & ORS. Petitioners

Through Mr. Vikas Gupta & Mr. Ishaan
Gupta, Advs.

versus

KRA INFRASTRUCTURE DEVELOPERS P.LTD.

..... Respondent

Through Mr. Nimesh Chib & Mr. Siddharth
Chaturvedi, Advs.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, petitioner seeks directions thereby to quash the complaint case No. 10764/16 filed under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act pending adjudication in the Court of Metropolitan Magistrate - 01 (NI Act), West, Tis Hazari Courts, Delhi.

2. The case of the respondent/ complainant is that petitioners have drawn the cheques referred in the complaint for a sum of Rs 4.1 crore in favour of

the respondent in discharge of legally recoverable debt pursuant to the terms of the MOU/ Agreement to Sell dated 19.6.2015 but the said cheques, upon presentation for encashment got dishonoured.

3. Learned counsel for the petitioners submits that upon a meaningful reading of the complaint and the documents produced along with it; it clearly indicates that the proceeding initiated by the respondent is vindictive in nature. The proceeding is initiated abusing the process of law with a mala fide intention of harassing the petitioners. As per the MOU/ Agreement to Sell dated 19.6.2015, the cheques referred in the complaint were issued towards the payment of advance sale consideration and as on date of issuance of the cheque no debt or other liability as defined under the provisions of Section 138 of Negotiable Instrument Act was in existence. The reading of the complaint, statement, and the documents produced by the respondent along with the complaint does not satisfy the ingredients of the offence punishable under section 138 of Negotiable instrument.

4. Further, the petitioner No. 1 is a Society of the employees of Hindustan Aeronautics Limited Bangalore and registered under the Karnataka Societies Registration Act, 1960 with its registered office at Vimanapura, Bengaluru, 560107 Karnataka.

5. During 2015, the respondent herein approached the petitioner society representing that it is intending to construct residential apartments near Hosakote Town, Old Madras Road, Bangalore District Bangalore and offered to sell the apartments to the members of the petitioner society. The respondent requested the petitioner society to facilitate the transaction on behalf of the members so that the respondent herein could deal at one point contact instead of dealing with the individual employees separately. Under this circumstance, the petitioner society signed the MOU and in terms of Clause 1.3 of the MOU, the sale of the individual apartments would be made to "members" of the Petitioner and each such transaction would entail a separate "Agreement to Sell" between the respondent and the "member" to be intimated to the respondent by the petitioner. In effect, the apartments were actually to be purchased, from the respondent, individually and separately by members of the Employees Welfare Fund of the petitioner society and the MOU was entered into, by the petitioner society with the respondent, only for facilitating the transaction. The petitioner society has not incurred any debt or other liability under the said agreement.

6. Learned counsel for the respondent submits that the respondent agreed to construct the houses for the members of the petitioner society and

accordingly, MOU, as mentioned above was signed. Pursuant thereto, in the month of June, four cheques amounting to ₹4.01 crores, of different dates, were issued in favour of the respondent, to be honoured in the month of July, 2015. However, the said cheques got dishonoured on 09.10.2105 itself when the same were presented by the respondent in its bank. Thus, as per the agreement entered into with the respondent, the petitioner society is under legal debt / liability.

7. The fact remains that the amount was paid by the society on behalf of its individual member to facilitate the transaction in getting their houses constructed by the respondent. Since the individual members of the petitioner society immediately doubted whether the respondent would be able to complete the flats, they did not deposit the amount with the society and thus, the cheques issued by the society got dishonoured.

8. It is not disputed that the society was constituted for the welfare of its members who were interested in getting their houses constructed by the respondent. Therefore, the society played a role only to facilitate its members in getting their houses constructed and the society had no liability as per Section 138 NI Act on the date of signing of the MOU.

9. Even if it is presumed that the said amount was paid to the respondent

as advance money, even then there appears to be no criminal liability or any liability which is recoverable under provisions of Section 138 NI Act.

10. The petition is accordingly allowed and the complaint case No. 10764/16 filed under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act and all consequent proceedings emanating therefrom are hereby quashed.

11. Order *dasti*.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 19, 2019

sm

न्यायमेव जयते