IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-226-MA-2015 (O&M)
Date of Decision: 11.02.2020

Indiabulls Financial Services Ltd.

...Appellant

Versus

M/s A.R. Industries Pvt. Ltd. and another

...Respondents

CORAM: HON'BLE MR.JUSTICE H.S. MADAAN

Present: Ms Kiran Bala Jain, Advocate for the appellant.

Mr. J.S. Lalli, Advocate for respondent No.2.

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H.S. MADAAN, J.

Complainant Indiabulls Financial Services Ltd., having its Corporate Office at Gurgaon through its authorized representative had brought a complaint under Section 138 read with Section 142 of the Negotiable Instruments Act (for short 'the Act') against accused M/s AR Industries Pvt. Ltd., Mathura Road, Faridabad and its Director Sh. Subhash Chand Aggarwal, New Delhi which was registered as criminal complaint No.4743 of 2009.

As per case of the complainant, the complainant company is engaged in finance and advancing loans etc. Accused M/s AR Industries Pvt. Ltd. Faridabad through its Director Subhash Chand Aggarwal had approached the complainant company, requesting for grant of loan for business purposes. The complainant company accordingly sanctioned loan in the sum of Rs.35,00,000/- under the scheme of business loan. The accused had promised to return the loan amount as per repayment schedule agreed upon between the parties but the accused did not stick to such schedule. Nevertheless in partial discharge of loan liability, the accused had issued cheque bearing No.716150 dated 11.08.2009 in the sum of Rs.1,01,901/- drawn on State Bank of India, Faridabad in favour of the complainant, giving an assurance that on presentation, the cheque would be encashed. Accordingly, the complainant deposited the cheque for collection with its banker INGVYSVA Bank Ltd., Gurgaon but the cheque was dishonoured and returned unpaid with the remarks 'insufficient funds' by the bank to the accused, vide memo dated 14.10.2009. Thereafter, the complainant dispatched a legal notice dated 04.09.2009 through courier/speed post on 15.11.2009 to the accused intimating about the aforesaid dishonour and calling upon the accused to pay the cheque amount within the period of 15 days from the date of receipt of the notice. The notice was duly served upon the accused but despite that accused did not pay the amount in question to the complainant, therefore, giving rise to a cause of action to the complainant to bring the complaint in question.

After recording the preliminary evidence, the accused was summoned to face the trial. The accused put in appearance and notice of accusation was accordingly served upon accused Subhash Chand Aggarwal for himself and as Director of M/s AR Industries Pvt. Ltd., Faridabad. He pleaded not guilty to the notice of accusation and claimed trial.

During the course of evidence of the complainant, it led oral as well as documentary evidence. Sh. Abhishek Kumar, Authorized Representative of the complainant company got his statement recorded as Ex.CW1 and tendered his affidavit as Ex.CW1/A in which he reiterated on oath case of the complainant as given in the complaint.

Sh. Sunil Kumar, Clerk to Sh. M.K. Dang appeared as CW2 and identified signatures of Sh. M.K. Dang, Advocate on legal notice Ex.P9. He also proved postal receipts Ex.P10 and Ex.P11. The complainant relied upon documentary evidence i.e. certificate of incorporation of complaint Ex.P1, copies of resolutions of complainant company Ex.P2 and Ex.P3, documents of loan Ex.P4, cheque Ex.P5, report memo Ex.P6, return memo bank of complainant Ex.P7, copy of statement of account of accused Ex.P8, legal notice Ex.P9, postal receipt Ex.P10 and courier receipt Ex.P11.

Statement of the accused was recorded under Section 313 Cr.P.C. He denied the allegations alleging that the cheque in question was given as a security. The accused led evidence in defence, during course thereof, they had examined Sh. Subhash Aggarwal as DW1, Kawal Jeet, Ahlmad in Court of Sh. Sachin Yadav, JMIC, Gurgaon as DW2. DW2 had produced summoned record in the form of criminal complaint.

Sh. Sandeep, Legal Manager of the complainant company appeared as DW3.

The accused relied upon documentary evidence i.e. order of this Court regarding winding up of the company Mark DW1/1, documents of foreclosure of loan of the company Mark DW1/2, documents vide which cheque company called of the loan Ex.DW1/3, photocopy of the cheques earlier taken as security cheques ExDW1/4 and copy of the award given in arbitration proceedings as Mark DW1/5.

After hearing arguments, learned Judicial Magistrate Ist Class, Gurgaon, vide judgment dated 21.05.2014 was of the view that accused had been able to rebut the presumption arising in favour of the complainant. Therefore, the accused were acquitted of the charge framed against them.

Feeling aggrieved, the complainant has approached this Court by way of filing an application under Section 378 (4) Cr.P.C., for grant of Special Leave to Appeal from the order of acquittal passed by JMIC, Gurgaon. Notice of the application was given to the respondents, who have put in appearance through counsel.

I have heard learned counsel for the parties besides going through the record.

The impugned judgment is quite detailed and well reasoned. The contentions raised on behalf of both the sides have been duly discussed. Firstly, coming to the pleas raised by the accused, one of which was that no demand notice was served or received by the accused and service of such notice is not proved on the record. Learned Magistrate had observed that even if for the sake of an argument, such contention is accepted, in that case also, accused could not escape from liability as they could make the payment within 15 days from the receipt of summons from the Court to escape prosecution but had not done so in the instant case. Therefore, that plea was rejected.

The second plea taken on behalf of the accused that the cheque was a blank undated security cheque, which was given by the accused on signing of loan agreement and it was presented without any intimation/information or instruction of the accused after foreclosure of loan agreement; learned Magistrate had observed that the cheque holder may use the security cheque as an alternative mode of discharging the liability and that it has to be shown that the cheque was used in discharge of a legal liability. In this case, it was established that a full and final outstanding loan amount was outstanding from the accused. That contention was also rejected. However, taking into consideration, the other factors, learned Trial Magistrate had observed that the cheque in dispute is dated 11.08.2009, meaning thereby that after dishonour of the cheque in dispute, there was again a demand by complainant company from the accused whereby the total outstanding amount was fixed as Rs.28,80,992/- but then it transpired from the record that the complainant company had also filed a criminal complaint under Section 138 of the Act for dishonour of a cheque for consolidated outstanding loan amount of Rs.28,80,992/-, which was pending, thereby showing that the cheque in dispute was cheque for equal monthly installment of the loan amount and that a settlement had taken place between the parties whereby the complainant company demanded an amount of Rs.28,80,992/- as consolidated outstanding loan amount where upon the accused issued another cheque for that consolidated outstanding loan amount. For that reason, the earlier cheque issued by the accused to pay the EMIs of the loan amount become unenforceable. Therefore, the complainant could not be allowed to recover the same loan amount twice. Consequently, the complaint was dismissed and the accused was acquitted.

I do not see any reason to disagree with the learned Trial Magistrate on this point. Learned counsel for the respondent has contended that in a similar matter, a Co-ordinate Bench of this Court had declined Leave to Appeal in case titled **'Indiabulls Housing Finance Ltd. Vs. M/s A.R Industries Pvt. Ltd. & Anr.'** in CRM-A-1156-MA-2014, decided on 26.08.2014. The facts of the present case are almost the same as that of the judgment in question. In this case also, I do not find sufficient reasons to grant Special Leave to Appeal from order of acquittal passed by the Trial Magistrate. The application so moved on behalf of the appellant/complainant stands dismissed accordingly.

11.02.2020 **(H.S. MADAAN)**
sumit.k **JUDGE**

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No