IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1631-2019
Date of Decision: 28.02.2020

Indiabulls Financial Services Ltd. ....Applicant

Versus

Ram Kumar Sharma .....Respondent

CORAM: HON'BLE MR. JUSTICE HARNARESH SINGH GILL

Present: Ms. Sheenu Sura, Advocate, for the applicant.

Harnaresh Singh Gill, J.

The complainant (applicant herein) has filed the present application under Section 378(4) Cr.P.C. for grant of special leave to appeal against the judgment dated 12.03.2019 passed by the Judicial Magistrate, Ist Class, Gurugram, whereby the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act, 1881 (for short `the Act'), was dismissed and the accused was acquitted.

The aforesaid complaint was filed by the complainant, inter-alia, with the averments that the complainant had advanced a commercial vehicle loan to the respondent to the tune of Rs.8,86,513/-; that the respondent made default in payment of the EMIs of the loans and accordingly, the entire loan was recalled; that in order to settle the loan account, the respondent had issue cheque No. 737700 dated 29.12.2012 for Rs.1,92,000/- drawn on ICICI Bank Ltd. Delhi; that when presented for encashment, the said cheque was dishonoured and that despite issuance of legal notice, the respondent did not make the payment.

The learned trial Court, while dismissing the complaint found that the cheque in question was issued as a security cheque, which had been misused by the complainant. It was further found that once the matter was settled and NOC was issued by the complainant 18.3.2012 (Ex.D1), there was no occasion for the respondent to issue the cheque in question dated 29.12.2012 in discharge of settlement of the loan account.

I have heard learned counsel for the applicant.

It is argued by the learned counsel for the applicant that the cheque was issued by the respondent in favour of the applicant/complainant in discharge of his legal liability. The said cheque was dishonoured with the remarks “funds insufficient’. Legal notice was also sent, but the cheque amount was not paid. The respondent admitted that he had taken loan and that he had also not denied his signatures on the cheque in question. The only defence taken by the respondent was that he had paid the entire loan amount.

It is further argued that hypothecation was made in the name of Indiabulls Financial Services Ltd and Indiabulls and Commercial Vehicle Finance was never a sister concern of Indiabulls. Thus, Ex.D1 is a forged document, but this aspect has not been appreciated by the trial Court and the loan of Rs.3,07,027/- is due towards the respondent/accused. It is the case of the applicant/complainant that India Bulls Financial Services Ltd., never issued `No Objection Certificate’.

After giving my thoughtful consideration, I am of the view that no case is made out for interference with the judgment of the trial Court.

It is a case in which the respondent/accused had not denied the issuance of cheque, but the stand taken by the respondent was that the cheque issued in favour of the complainant was a security cheque at the time of execution of the loan agreement and that the same was not in discharge of the legal liability. After the loan of Rs.8,86,513/- for purchase of the commercial vehicle was sanctioned, an agreement was executed on 31.7.2009. The entire loan amount had been re-paid on the basis whereof `NOC' dated 18.3.2012 (Ex.D1) and Form 35 (Ex.D2)were issued by Indiabulls and as per Arun Kumar, ARTO, the vehicle was transferred in the name of Jayveer Singh.

It is also pointed out that Indiabulls and Commercial Vehicle Finance were never the sister concerns of Indiabulls. However, no witness to this aspect had been examined. It is to be noticed that NOC (Ex.D1) and Form 35 (Ex.D2) are dated 18.3.2012. Complaint was filed on 12.03.2013. Thus, if any fraud had been committed with the complainant Company by procuring false and fabricated documents, an immediate action ought to have been taken by approaching the Regional Transport Authority. But, nothing of the sort was done.

Moreover, as per the agreement dated 31.07.2009 entered between the complainant-Company and the respondent-accused, the cheque was given as a security at the time of borrowing of loan. The same was issued in the name of Indiabulls Financial Services Ltd., which was written in a different ink and on the date of issuance of cheque i.e. 29.12.2012, Indiabulls Financial Services Ltd., was not in existence as it came into existence on 8.3.2013, as per the letter Ex.P2 placed on record by the complainant. Therefore, there was no occasion for the respondent/accused to issue cheque in the name of Indiabulls Financial Services Ltd.

Furthermore, CW1-Balbir Singh, A.R. of the complainant-Company admitted in his cross-examination that the respondent/accused had paid Rs.10,45,000/- to the complainant and Rs.3,07,027/- was due and recoverable. Once the NOC had been issued in favour of the RTO, Rampur by the complainant-Company, there was no need for the respondent to issue the cheque in question and that too for an amount of Rs.1,92,000/-.

In view of the above, I do not find any patent illegality or irregularity in the impugned judgment, which may warrant interference by this Court in the present application seeking special leave to appeal.

In view of the above, the present application being devoid of any merit is dismissed. Leave to appeal is declined.

(HARNARESH SINGH GILL)
JUDGE

February 28, 2020

Whether Speaking/ Reasoned: Yes/ No
Whether Reportable: Yes/ No