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

CRL.M.C. 6140/2019 and Crl.M.A.No.41566/2019

Date of Decision: 22.01.2020

IN THE MATTER OF:

RITESH JINDAL(PROPRIETOR) & ANR ..... Petitioners

Through: Mr.Dhan Mohan, Ms.Tanu B. Mishra, Mr.Ravi Mishra and Ms.Mahima Gautam, Advocates.

versus

KANTA DEVI ..... Respondent

Through: Mr.Sanjeev Bhardwaj, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

MANOJ KUMAR OHRI, J. (ORAL)

1. This petition is directed against the order dated 20.11.2019 passed by the Addl. Sessions Judge-03 (East), Karkardooma Courts in CC No.57575/2016 arising out of proceedings under Section 138 of the Negotiable Instruments Act whereby the order dated 12.09.2019 passed by the Trial Court was upheld.

2. Briefly stated, the facts of the case are that the respondent/complainant in August, 2014 filed a case under Section 138 of the Negotiable Instruments Act against the petitioner. After the examination and cross-examination of the respondent/complainant's witnesses, the petitioner's statement was recorded and the matter was listed for defence evidence. On 21.08.2019, the petitioner filed his list of witnesses as well as an application for summoning the witnesses from

Punjab National Bank with respect to CC account No.1845008700001103 along with complete records in respect of the same. The petitioner also sought summoning of the concerned person from P.S. Shalimar Bagh with respect to DD/NCR No.2778/12 and complaint dated 23.01.2015 filed by the petitioner against the respondent. Lastly, the petitioner also sought summoning of the concerned Clerk/Ahlmad of the concerned Court with respect to CC No.9306/2016 tilted as "*Ritesh Jindal v. Kanta Devi*" along with the original file.

3. The Trial Court vide its order dated 12.09.2019 dismissed the petitioner's application for summoning of the witnesses with the records. While passing the aforesaid order, the Trial Court also closed the right of the petitioner to lead defence evidence.

4. During the course of arguments, learned counsel for the petitioner submitted that he is restricting his prayer in the aforesaid application only to summoning the witness from Punjab National Bank along with the complete records with respect to the afore-mentioned account.

5. He submitted that although the respondent/complainant had summoned the witnesses from the Bank who were examined as CW-2 and CW-3, however, the cross-examination with respect to the afore-mentioned account could not be carried out in detail as the concerned witnesses brought only the "Account opening form" and statement of account with respect to the afore-mentioned account without the other supporting documents.

6. It is the case of the petitioner that initially he was in partnership with one Naveen Yadav in M/s. Priya Garments which had a CC account No.184500870000931 maintained in the Punjab National Bank.

Subsequently, the partnership was dissolved and a fresh account being CC account No.1845008700001103 was opened by said Naveen Yadav in the name of M/s. Priya Garments in the same branch of Punjab National Bank.

7. It is further the case of the petitioner that he had no concern with the respondent, as no transaction ever took place between the petitioner and the respondent. He submitted that the petitioner's firm namely, SR Retail India had no concern with the respondent and the cheque in question was never issued by the petitioner.

8. He has also referred to the reply dated 08.11.2017 filed on behalf of the Punjab National Bank with respect to the petitioner's application where it has been stated that the respondent stood as guarantor (by mortgaging the title deeds of her property) in the CC Account No. 184500870000931 of M/s. Priya Garments and that the original title documents were released to her after the CC limit of M/s Priya Garments vide CC Account No. No.1845008700001103 was closed on 16.07.2015 vide OTS by paying Rs.52,50,000 as a guarantor of M/s. Priya Garments. It was further stated that the original title documents were released to the respondent on 22.07.2015.

9. Per contra, learned counsel for the respondent submitted that the concerned witnesses i.e. CW-2 & CW-3 from the Punjab National Bank had produced the relevant records and were duly cross-examined by the petitioner's counsel and as such the present petition is nothing but an attempt to delay the trial. He has also referred to the letter dated 30.03.2012 issued by the petitioner to the respondent.

10. A perusal of the order dated 12.09.2019 passed by the Trial Court would indicate that it was passed without appreciating the petitioner's

contention that except for the account opening form and statement of account with respect to CC account No. 1845008700001103, no supporting document was brought by the concerned witnesses.

11. Without commenting on the merits of the case, it is deemed appropriate that in the facts and circumstances of the case, the impugned order is set aside and subject to payment of cost of Rs.25,000/-, the petitioner is permitted to summon the relevant witness along with complete records from the Punjab National Bank with respect to CC account No.1845008700001103. The cross-examination shall be completed by the petitioner on one date unless, in the opinion of the Trial Court, the cross-examination cannot be completed in a single date. Out of the aforesaid cost of Rs.25,000/-, a sum of Rs.10,000/- shall be paid by the petitioner to the respondent and the remaining balance amount of Rs.15,000/- shall be deposited by the petitioner with the Delhi Legal Services Authority within a period of two weeks.

12. The petition and the application are disposed of in the above terms.

13. A copy of this order be communicated to the Trial Court.

(MANOJ KUMAR OHRI)
JUDGE

JANUARY 22, 2020
'dc'