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

\+ **CRL.L.P. 139/2020 & CRL.M.A. 2768/2020**

SHRIRAM CITY UNION
FINANCE LIMITED ..... Petitioner

Through Mr Sourabh Leekha and Mr Kapil Dua, Advocates.

versus

BAJRANG LAL SAIN ..... Respondent

Through

CORAM:
HON'BLE MR. JUSTICE VIBHU BAKHRU

O R D E R

% **06.02.2020**

CRL.M.A. 2769/2020

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CRL.L.P. 139/2020 & CRL.M.A. 2768/2020

3. The petitioner has filed the present petition seeking leave to appeal against a judgment dated 22.05.2019 (hereafter 'the impugned judgment') passed by the MM, South-West, Dwarka Courts by which the respondent was acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).

4. The petitioner contends that the impugned judgment is erroneous because the respondent (hereafter also referred to as 'the accused') had failed to prove his defence before the Trial Court. The petitioner submits

that the evidence, as obtaining in the present case, establishes that the respondent could not rebut the statutory presumption under Sections 118 and 139 of the NI Act.

5. The petitioner is a private limited company incorporated under the Companies Act, 1956. It is a non-banking financial company (NBFC) engaged in the business of lending and finance. On 14.06.2013, the petitioner had extended a loan of ₹1,00,000/- to one M/s Meghna Garments Fabrication (the principal borrower) vide a Loan Agreement (bearing no. JAIPRTF1306140001) and the respondent had stood as a guarantor for due performance of the repayment obligations of the principal borrower. According to the petitioner, M/s Meghna Garments Fabrication defaulted in making payments of monthly installments of the said loan to the petitioner.

6. On 14.02.2017, a cheque bearing no. 391673 dated 14.02.2017 for a sum of ₹2,98,324/- drawn on State Bank of Bikaner and Jaipur, Saladipura, Sikar, Rajasthan was given by the respondent to the petitioner towards payment of the dues under the aforesaid Loan Agreement. The petitioner thereafter deposited the said cheque with its banker (Union Bank of India, Vikas Puri, Delhi). The same was returned unpaid with the remarks 'insufficient funds' vide bank return memo dated 18.02.2017. Thereafter, the petitioner served a legal notice dated 09.03.2017 upon the respondent. Admittedly, the petitioner neither received a reply to the said notice, nor received any payment from the respondent.

7. Pre-summoning evidence was led by the petitioner and the authorized representative (AR) of the petitioner company furnished an affidavit

affirming as to the facts of the case; the original cheque; the bank return memo dated 18.02.2017; the legal notice dated 09.03.2017; and the Power of Attorney in favour of the AR. The Trial Court, after appreciating the pre-summoning evidence, summoned the accused. The accused pleaded not guilty and the matter was set down for trial. The accused denied his signatures on the cheque but admitted that the cheque pertained to his bank account and that he had received the legal notice. The accused stated that he had applied for a personal loan from the petitioner about seven-eight years ago and had given a blank and unsigned cheque leaf (the cheque in question) to the petitioner. However, his application for a loan was rejected and the petitioner did not sanction a loan in his favour. He stated that when he asked that the cheque be returned to him, the petitioner company informed him that the same could not be returned since it had been affixed in the file. The accused stated that he did not know any Anoop Devi (proprietor of M/s Meghna Garments Fabrications) and that the cheque in question had been misused by the petitioner company.

8. In his statement under Section 313 of the CrPC, the accused stated that he did not know any Anoop Devi and the cheque in question had not been issued by him for any payment on behalf of Anoop Devi. The accused also cross-examined the AR of the petitioner company.

9. The Trial Court held that the defence of the accused that the cheque in question had not been signed by him was not acceptable for two reasons. First, because the cheque had been returned with the memo 'funds insufficient' and not because the signature on the cheque did not match the signature of the accused, as was stated by the respondent. The Trial Court

found no striking dissimilarity between the signature on the cheque and the admitted signatures done by the respondent. Second, even if it is assumed that the signatures on the cheque did not match the admitted signatures of the accused, it is well settled that the same could not be the sole ground for the acquittal of the accused.

10. Further, the Trial Court observed that the petitioner had neither in the complaint nor in the examination of its AR, disclosed the amount of the loan disbursed; the date of advancing the loan; the period of loan; or rate of interest on the said loan. No document pertaining to the alleged loan was placed on record by the petitioner in the proceedings before the Trial Court. It had not filed details of any account; the accounts statement; or any bank statement. The petitioner had not furnished any explanation whatsoever regarding how the amount of ₹2,98,324/- was computed. Even the Loan Agreement, allegedly entered into between the petitioner, Anoop Devi and the respondent (as guarantor) was not placed on record before the Trial Court and no reasons were given for not placing the same on record. The Trial Court also recorded that even though the petitioner company's AR stated that the respondent gave the cheque in question on behalf of Anoop Devi, no explanation was given as to in what capacity the respondent required to discharge the liability on behalf of Anoop Devi.

11. The Trial Court found that the respondent was able to rebut the statutory presumptions as provided under the NI Act. Thus, the onus to establish that the respondent had issued the cheque in question to discharge an enforceable liability had shifted onto the petitioner. However, the petitioner was unable to discharge the burden of proof and could not prove

its case beyond the threshold of reasonable doubt. Thus, the Trial Court acquitted the respondent of the offence under Section 138 of the NI Act.

12. In the present case, the petitioner had not established even the basic foundation of its claim. It had not established the amount of loan that was granted allegedly granted to Anoop Devi; that the respondent had stood as a surety/guarantor for the loan as the guarantee agreement was not produced; the amount of interest accrued and the basis for the same; and whether any demand invoking the guarantee had been served. In its complaint the petitioner had alleged that the respondent had issued the cheque in question on behalf of Anoop Devi. However, it was established that the respondent had not issued the cheque for the aforesaid sum of ₹2,98,324/- as at the time the cheque was allegedly accepted by the petitioner, the principal had not been disbursed to the principal borrower. Although in the cross examination, the AR of the petitioner had mentioned that the principal amount was ₹1,00,000/-, his testimony was bereft of any other details.

13. In the given facts, this Court finds no infirmity with the impugned order. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

FEBRUARY 06, 2020

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