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

+ CRL.M.C. 2362/2017 & & CrI.M.A. 9589/2017

P V R MURTHY

..... Petitioner

Through: Mohd. Fuzail Khan with Mr. Umair
Ahmed Siddiqui, Advs.

versus

CECIL WEBBER ENGINEERING LTD & ORS Respondents

Through: Mr. N. P. Singh with Ms. Anupama
Kaul, Advs. for R-1
Ms. Smriti Churiwal and Mr. Jaivir K.
Sidhant, Advs. for R-2

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

ORDER

% **15.01.2020**

Counsel for the petitioner has admitted that petitioner is signatory of the cheques in question and responsible for the day to day affairs of the company, however, other directors are also equally liable, but were deleted by the complainant by way of an application filed before the Trial Court.

Thus, the petition under Section 138 of the Negotiable Instruments Act is not maintainable against the petitioner.

To strengthen his arguments on the aforesaid issue, he has taken the shelter of Section 141 of Negotiable Instruments Act, 1881 which is reproduced as under:-

“141 Offences by companies. —

(1) If the person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this sub-section shall render any person liable to punishment if he proves that the offence was committed without his knowledge, or that he had exercised all due diligence to prevent the commission of such offence: 22 [Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter.]

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to, any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.”

On perusal of the said section, it is stated therein that if person committing an offence under section 138 is a company, every person who, at the time the offence was committed, was in charge of and was responsible to the company for the conduct of the business of the company, as well as the company.

The aforementioned section nowhere states that the complaint is not

maintainable if all the responsible persons of the company are not made as accused in the complaint. Thus, as per said section, only to implead the accused persons who are responsible for the conduct of the business of the company. Thus, court cannot direct the complainant to select the accused against whom he wants to file complaint, however, the Trial Court has to see that whether the petitioner herein is responsible and guilty of the offences punishable under Section 138 of Negotiable Instruments Act, r/w Section 141 and 142 of Negotiable Instruments Act, 1881.

Accordingly, I find no merit in the petition and the same is dismissed.

Pending application also stands disposed of.

The Trial Court shall not get influenced by the observations made by this Court.

The Trial Court shall proceed in the matter, however, the personal appearance of the petitioner shall remain exempted through counsel.

SURESH KUMAR KAIT, J

JANUARY 15, 2020

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