

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

CRM-M-16307 of 2021

Date of Decision: July 27th, 2021

M/s A. G. Builders and another

Petitioners

Versus

M/s Remira Motors Pvt. Ltd.

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Rakesh Gupta, Advocate for the petitioners.

AVNEESH JHINGAN, J.

The matter is taken up for hearing through video conference due to COVID-19 situation.

This petition under Section 482 Cr.P.C. is filed for quashing of order dated 17.3.2021 passed by Judicial Magistrate Ist Class, Moga refusing to stay the proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for brevity, 'the Act').

The facts in brief are that petitioner No. 1 a proprietorship concern is engaged in the business of civil contracts. An agreement dated 19.1.2017 was entered into between petitioner No. 1 and the respondent. The work was to be completed by 31.12.2017. Another contract was entered on 30.5.2017. As per the pleadings, a blank security cheque taken from petitioner No. 1 was presented and when dishonoured, complaint under Section 138 of the Act was filed. In the meantime due to dispute between the parties, the arbitration clause of the agreement was invoked and dispute referred to the arbitration.

An application was moved before the Judicial Magistrate Ist Class for staying the proceedings under Section 138 of the Act till the disposal of arbitration proceedings. On rejection of the application, the present petition is filed.

The contention of learned counsel for the petitioners is that there is a dispute between the parties, pending arbitration there is no occasion to proceed in complaint case. He submits that the arbitration proceedings and dishonour of cheque arise from the same agreement hence there cannot be two parallel proceedings.

The contention of learned counsel for the petitioners is not worth acceptance.

The arbitration proceedings are with regard to the civil dispute arising on alleged violation of terms of agreement. The proceedings under Section 138 of the Act are criminal proceedings for not honouring the cheque issued. The application for stay was moved at the stage of recording of evidence of the petitioners, meaning thereby that evidence of the complainant was complete. The endeavour of the petitioners appears to delay the proceedings.

Supreme Court in M/s Sri Krishna Agencies v. State of A. P. and another, 2009(1) SCC 69 held that there is no bar to simultaneously continue criminal proceedings and civil proceedings if both arise from separate cause of action.

In the case in hand, the cause of action for proceedings under Section 138 of the Act is dishonouring of cheque whereas arbitration proceedings are for violation or non-adherence to terms of agreement.

There is no merit in the present petition.

Dismissed.

[AVNEESH JHINGAN]
JUDGE

27th July, 2021
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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | Yes |