IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

116

CRM-M-3586-2017
Date of Decision: 16.09.2021

Chadha Super Car (P) Ltd. and another ...... Petitioners

Versus

Aabha Sikri .... Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

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

Mr. Nitin Thatai, Advocate,
for the respondent.

*****

AMOL RATTAN SINGH, J. (ORAL)

Case heard via video conferencing.

By this petition, the petitioners seek quashing of the Complaint No.13163 dated 20.12.2016, and the summoning order dated 20.12.2016, in a complaint instituted under the provisions of Section 138 of the Negotiable Instruments Act, 1881, pending in the court of the learned JMIC, Ludhiana.

When this petition initially came up for hearing, the following order was passed by this court (coordinate Bench) on 06.02.2017:-

> "Heard learned counsel for the petitioners.
> He submits that the cheque in question was signed by Sumesh Chadha (partner of M/s Chadha Motors) and petitioner No.2-Mrs. Geeta Chadha did not sign any cheque.
> In that view of the matter, issue notice of motion returnable on 08.03.2017.
> Ad interim stay of the proceedings."

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

Thereafter the matter having remained pending over the last about 4 ½ years, on 02.09.2021 the following order had been passed by this court:-

"XXX XXX XXX

CRM-9076-2020 IN/&CRM-M-3586-2017

Vide this application, the petitioners wish to place on record an additional affidavit as also a document, i.e. a copy of Form DIR-12, (as Annexure P-5 with the accompanying petition).

Notice in the application.

Mr.NitinThatai, Advocate, accepts notice at the asking of the Court on behalf of the non-applicant-respondent and does not oppose the prayer made in the application.

Consequently, the application is allowed and the additional affidavit of petitioner No.2, Geeta Chadha, is taken on record along with the aforesaid copy of Form DIR-12, dated 20.07.2015, with the accompanying petition.

Mr.Thatai, learned counsel for the respondent, very fairly submits that since it is shown vide the said form that GeetaChadha had resigned as a Director of the company,i.e.M/s Chadha Super Cars (P) Limited (petitioner No.1), w.e.f. 31.07.2015, and the cheques in question are all dated in the month of August 2016, i.e. more than one year later, the respondent-complainant would have no grievance left against her.

However, he submits as regards petitioner No.1, i.e. M/s Chadha Super Cars (P) Ltd., though it is obviously a separate entity other than the firm on behalf of whom the cheques in question were issued by SumeshChadha (one of its partners), the company itself is also a partner in the said firm, i.e. M/s Chadha Motors, and therefore the petition qua the company itself does not deserve to be allowed.

That being so, as regards petitioner No.2 the petition is allowed and the name of Ms.GeetaChadha is ordered to be deleted as a respondent in the complaint instituted by the respondent herein before the learned trial Court, (she having been shown as respondent No.7 in the said complaint, Annexure P-3).

As regards the remaining petitioner, i.e. M/s

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

> Chadha Super Cars (P) Limited, Mr.Bhatia, learned counsel for the petitioners, has very fairly admitted that even as per the partnership deed (Annexure P-1), the company is a partner in the said firm. He still however submits that it has been unnecessarily made a respondent in the complaint filed by the respondent herein (under the provisions of Section 138 of the Negotiable Instruments Act, 1881), in view of the fact that the firm itself, i.e.M/s Chadha Motors, and the person who had issued the cheque on behalf of the firm, i.e. SumeshChadha, have already been impleaded as respondents No.1 and 2 in the complaint.
>
> Prima facie, in the opinion of this Court, once it is admitted that the company itself is also a partner of the said firm, it would be a necessary party in the complaint, failing which the complaint itself may be liable to be dismissed on that short ground alone; yet, Mr.Bhatia seeks to cite judgments in respect of his contentions.
>
> Adjourned to 09.09.2021 for final arguments.
>
> To be shown in the urgent motion list."

Thus, this petition was allowed on that date, qua the 2nd petitioner, i.e. Mrs. Geeta Chadha, with the remaining petitioner being M/s Chadha Super Cars (P) Ltd.

Thereafter, on the last date of hearing and today, Mr. Bhatia, learned counsel for the petitioners, relies upon a judgment of the Supreme Court in **SMS Pharmaceuticals Ltd. Vs. Neeta Bhalla and another,** 2005 (4) RCR (Crl.) 141, that being a judgment passed by a three judges Bench, upon a reference made to a larger Bench on the following questions:-

> "(a) whether for purposes of Section 141 of the Negotiable Instruments Act, 1881, it is sufficient if the substance of the allegation read as a whole fulfill the requirements of the said section and it is not necessary to specifically state in the complaint that the persons accused was in charge of, or responsible for, the conduct of the business of the company?
>
> (b) whether a director of a company would be deemed to be in charge of, and responsible to, the company for

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

> conduct of the business of the company and, therefore, deemed to be guilty of the offence unless he proves to the contrary?
> (c) even if it is held that specific averments are necessary, whether in the absence of such averments the signatory of the cheque and or the Managing Directors of Joint Managing Director who admittedly would be in charge of the company and responsible to the company for conduct of its business could be proceeded against?"

Mr. Bhatia thereafter refers to paragraph 13 of the said judgment (essentially answering the 3rd question framed by their lordships), to submit that it has been very clearly held therein that even in terms of Section 141 of the Negotiable Instruments Act, 1881, it is only such Directors/Company Secretaries etc. who need be impleaded as respondents, who would be liable for the debt incurred in respect of which the cheque in question was dishonoured, and Directors and Secretaries etc. who are not actually involved in the day to day affairs or the running of the company, need not be made liable for the dishonour of any instrument under the provisions of the said Act.

Section 141 of the said Act reads as follows:-

> "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:
>
> [Provided further that where a person is nominated as a Director of a company by virtue of his holding any

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

> 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.
>
> Explanation.—For the purposes of this section,
>
> (a) "company" means anybody corporate and includes a firm or other association of individuals; and
>
> (b) "director", in relation to a firm, means a partner in the firm."

Mr. Bhatia submits that this court already having allowed this petition qua petitioner no.2 (Mrs. Geeta Chadha) vide its order dated 02.09.2021, the only person who is now a partner in the firm (other than petitioner no.1, i.e. the company, which is also a partner in the firm), and who is also a Director in the company, that is the remaining petitioner (Chadha Super Cars (P) Ltd.), is Sumesh Chadha, who already stands impleaded as a respondent in the complaint in his capacity as a partner of the firm (M/s Chadha Motors); and therefore impleading the petitioner company also as a respondent in the complaint, virtually amounts to impleading the same person as a respondent twice, with the other partner in the firm who was also a Director in the company, i.e. Sh. Krishan Kumar Chadha, having died.

Mr. Thatai, learned counsel for the respondent, on the other

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

hand relies upon various judgments including one in **Mannalal Chamaria and another vs. State of West Bengal and another** 2014(2) R.C.R. (Criminal) 232, to submit that it is well settled law that "it is necessary for the complainant to state in the complaint that the person accused was in charge of and responsible for the conduct of the business of the company".

He submits that the respondent/complainant having discharged its duty in that regard, as would be seen from a perusal of paragraphs 3 to 5 of the complaint (copy Annexure P-3), it would be for each respondent in the complaint to show that he/she/it is not running the day to day affairs of the firm.

When this court was initially inclined to dispose of the petition with a direction to the trial court to consider the reply filed on behalf of each respondent to determine as to whether such respondent was involved in the day to day affairs of the firm on behalf of which the cheque was issued by its partner Mr. Sumesh Chadha, Mr. Bhatia very rightly points out that the trial court having already issued summons to all the respondents impleaded in the complaint, it would be beyond its jurisdiction to review that order.

Having considered the matter, what is first to be noticed by this court is that in the judgment pointed to by the learned counsel for the petitioner, i.e. *S.M.S. Pharmaceuticals Ltd. (supra)*, one of the questions that the Supreme Court was seized of, was the necessity/non-necessity of impleading Directors of a company who may not actually be involved in the day to day running of the affairs thereof, whereas on the other hand even persons who were not Directors, i.e. employees etc., who may be necessarily

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

involved in day to day running of the company, may be necessary respondents.

On the other hand, in the present case, the cheque in question was issued on behalf of a partnership firm and not a company, with the company, i.e the remaining petitioner in this petition (M/s Chadha Super Car (P) Ltd.), admittedly being a partner in the firm (M/s Chadha Motors Ltd.), with the only other partner now remaining (as per learned counsel for the petitioner), being Sh. Sumesh Chadha.

In my opinion, the basic difference would be that whereas the Directors in a company may not be individually liable in respect of any debt/liability of a company if they are not involved in the day to day affairs of the company, on the other hand all partners in a partnership firm would be so liable, and therefore even if the Director in the petitioner company and the other partner in the partnership firm are physically the same person, that would not absolve the other partner (in this case the petitioner M/s Chadha Super Car (P) Ltd.), of the liability incurred on behalf of the partnership firm to discharge which the instrument in question (cheque) had been issued on behalf of that firm, as is alleged to have been dishonoured (as per the complainant-the respondent herein).

Thus, if the petitioner is held by this court to not be a necessary respondent in the complaint filed, and eventually if the complaint is allowed on merits (with no comment made by this court at all in that regard), it would amount to saying that the petitioner herein, even as a partner of the firm, is not liable towards the discharge of the liability of the firm.

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

[Of course, whether or not there was any liability existent at all to discharge which the cheque in question was issued (or not issued), is again something that this court would have no comments to make in this petition, with that question to be also obviously decided by the trial court on the basis of evidence led before it.]

Hence, with the petition in respect of petitioner no.2 earlier impleaded (Mrs. Geeta Chadha) having been allowed on the ground that she had already resigned as a Director in M/s Chadha Super Car (P) Ltd. before the cheque in question was issued, as regards the remaining petitioner, i.e. the company itself, I would see no reason to entertain this petition any further, the company admittedly being a partner in the firm M/s Chadha Motors Ltd., on behalf of which the cheque in question had been issued.

Consequently with the aforesaid observations, this petition is dismissed.

Obviously, to repeat, it is made clear that nothing stated in this petition would affect the merits of the case as regard the dishonouring of the cheque in question, with that matter to be gone into by the trial court wholly on the basis of evidence led before it.

At this stage Mr. Bhatia has expressed a concern that the Director of the petitioner company also being a partner in the firm on behalf of which the cheque in question was alleged to have been issued, he being the signatory to the cheque, he may be allowed to furnish only one set of bail and surety bonds to the satisfaction of the trial court, i.e in his capacity, both, as a Director of the petitioner company as also a partner of the firm in

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document

question.

That contention seems to be reasonable to this court, since the person involved is only one and hence obviously the bail and surety bonds are to be furnished by him only, to ensure that he does not abscond etc. and remains present before the court as and when summoned.

Hence, the trial court may allow him to furnish a single set of bail and surety bonds, both, in his capacity as a partner of the firm, as also a Director of the company.

However, allowing of that oral prayer made by learned counsel for the petitioner would not absolve the petitioner company of its liability as regards discharge of the debt in respect of the cheque in question was issued, if eventually the complaint of the respondent is allowed.

Since a long time has gone by with the trial not having progressed due to the interim order passed by this court, the trial court is requested to expedite the trial.

(AMOL RATTAN SINGH)
JUDGE

16.09.2021
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No

VIRENDRA SINGH ADHIKARI
2021.09.20 12:02
I attest to the accuracy and
integrity of this document