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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 15.06.2022

CORAM

THE HONOURABLE MRS.JUSTICE T.V.THAMILSELVI

CRL.O.P.NO.1573 OF 2019

M/s. Sri Shanthi Guru Marbles,
Proprieties of Mrs.N.Rekha,
W/o Navin Kumar,
Rep by her power agent, Mr. Navin Kumar,
S/o Gowtham Chand,
No.316/99, Thiruvottiyur High Road,
Chennai - 600 019.

... Petitioner

Versus

M/s Vigneshwara Minerals,
Proprieties of Mr.Ramesh Yadhav,
Father Name not known,
H.No.7-1-510, Mankammathota,
Karim Nagar, Telangana - 505 001.

... Respondent

Prayer:-Criminal Original Petition filed under Section 482 of the Code of Criminal Procedure seeking to set aside the order in C.M.P No.3211 of 2017 passed by the Judicial Magistrate, Thiruvottiyur, Dated 03.09.2018 and direct the lower Court to take cognizance of the complaint filed in un-numbered STC No. of 2018 pending before the aforesaid Court.

For Petitioner : Mr.K.Madhan

For Respondent : Mr.V.Selvaraj
Mr.B.Kumarasamy for Intervenor

ORDER

The petition has been filed to set aside the order passed by the learned Judicial Magistrate, Thiruvottiyur, in C.M.P No.3211 of 2017 Dated 03.09.2018 and direct the lower Court to take cognizance of the complaint filed in un-numbered STC No. of 2018.



2.The petitioner herein is the complainant who has preferred a complaint before the Judicial Magistrate, Thiruvottiyur under Section 138 of Negotiable Instrument Act, against the respondent/accused with the delay of 240 days. Hence, petitioner/company filed an application to condone the delay before the said Magistrate in C.M.P No.3211 of 2017 and on hearing both sides the learned trial Judge concluded that no valid reason was assigned for the delay of 240 days and accordingly, said application was dismissed. Aggrieved by the same, the petitioner filed this Criminal Original petition.

3.The learned counsel for the petitioner submits that, out of business transaction, the respondent issued four cheques for a sum of Rs.21,00,000/- dated 26.07.2016, and when the cheques were presented for collection before the HDFC Bank Ltd., Thiruvottiyur on 27.07.20216, the same were returned as "funds insufficient". Then, the petitioner issued a statutory demand notice to the respondent on 02.08.2016, for which the respondent issued a reply notice dated 26.08.2016, in which he admitted his liability and made a proposal to settle the matter amicably. Thereafter, the preferred a complaint under Section 138 of Negotiable Instrument Act.

4.The learned counsel for the petitioner/company submitted that the petitioner mis-placed their original documents and the relevant materials. So, they were not able to file a complaint within a prescribed period as mentioned in Section 142 (b) of Negotiable Instrument Act. This complaint has to be filed within one month from the date on which cause of action arose under clause (c) of the provisions of Section 138 of Negotiable Instrument Act. Further, he submitted that the petitioner/complainat filed a petition to condone the said delay, but, for the above said reason, the application was dismissed by the trial Judge holding that no sufficient cause was shown in the petition. Further, he pointed out that, previously there was business transaction between the petitioner and the respondent, thus, the petitioner is having valid materials for invoking the proceedings under Section 138 of Negotiable Instrument Act proceedings. Hence learned counsel for the petitioner prayed to set aside the impugned order passed by the learned trial Judge.

5.The learned counsel for the respondent submitted that the there is no provision to condone the delay under the provisions of the Negotiable Instrument Act. Besides, the reason stated by the petitioner were insufficient. Hence, the trial Court rightly dismissed the application.



6. Considering the submissions on either side and also on a perusal of the records, it reveals that, from the year 2015, there was a business transaction between the petitioner and the respondent with regard to delivery of granite blocks. During the course of such business, the petitioner paid entire invoice amount of a sum of Rs.21,00,000/- to the respondent through RTGS in two installments of Rs.11,00,000/- and 10,00,000/- dated 23.03.2015 and 25.03.2015 respectively and completed the entire payment as demanded by the respondent under the 'proforma invoice' on 25.03.2015. The business transaction was not arranged as the respondent promised, and when the petitioner demanded for the re-payment, he issued four cheques dated 26.07.2016 and the same were presented before the HDFC Bank Ltd., Thiruvottiyur on the next day, which were returned as 'insufficient fund'. Thereafter, on 02.08.2016 the petitioner issued a notice to the respondent, for which the respondent replied via notice on 26.08.2016. On a perusal of the reply notice, it appears that the respondent admitted the amount received through RTGS from the petitioner.

7. The above facts clearly reveals that transactions may attracts Section 138 of Negotiable Instrument Act. There was 240 days delay to file a complaint before the concerned Judicial Magistrate and the reason stated by the petitioner for delay was that the petitioner/company misplaced the original documents and so they were not able to file the application before the trial Court within one month of statutory period. As submitted by the respondent's counsel, admittedly, there is no provision for condoning the delay in the Negotiable Instrument Act. Clause (b) Section 142 of the Negotiable Instrument Act, states that " Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complaint satisfies the Court that he had sufficient cause for not making a complaint within such period".

8. The reason stated for the delay was mis-placement of original documents. It is natural that there may be lot of possibilities to mis-place the original documents since the documents are four cheque leaves. Further, the learned counsel for the petitioner relied upon the Judgment laid down by this Court in S.K.A.P Balakrishnan Vs Jimmy and argued that length of delay is not material but reason assigned for the delay is material. Further he relied upon the Judgment laid down by Our Apex Court in N.Balakrishnan Vs M.Krishnamurthy [1998 (7) SCC 123];

'A.Limitation Act, 1963 - S.5 - Condonation of delay - Discretion of Court- How to exercise - guidelines stated - Words 'Sufficient cause'



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should be construed liberally - Acceptability of explanation for the delay is the sole criterion, length of delay not relevant - In absence of anything showing sole criterion or deliberate delay as a dilatory tactic, Court should normally condone the delay - However while doing so Court should also keep in mind the consequent litigation expenses to be incurred by the opposite and should compensate him accordingly - where a court condones delay in positive exercise of discretion, superior Court and more particularly the revisional Court should not normally disturb the same - But where request for condonation of delay is refused, it would be open to the superior Court to come to its own finding on the basis of explanation for the delay given by the party - delay on the part of defendant-appellant of 883 days is approaching the Court against dismissal of his application to set aside ex-parte decree passed against him - Non action on the part of his advocate explained as cause for the delay - appellant also complaining about conduct of the advocate before consumer forum and getting Rs.50,000/- as compensation - Appellant's explanation for the delay accepted and delay condoned by trial Court - But in revision High Court setting aside the order of trial Court on ground that appellant was negligent and was not careful enough to meet the advocate to verify the stage of the proceedings for a long time - Held, High Court in revision erred in interfering with the exercise of jurisdiction by trial Court in condoning the delay when appellant's conduct did not as a whole warrant castigation his as an irresponsible litigant having regard to present busy and preoccupied life.'

'13. It must be remembered that in every case of delay, there can be some lapse on the part of the litigant concerned. That alone is not enough to turn down his plea and to shut the door against him. If the explanation does not smack of mala fides or it is not put forth as part of a dilatory strategy, the court must show utmost consideration to the suitor. But when there is reasonable ground to think that the delay was occasioned by the party deliberately to gain time, then the court should lean against



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acceptance of the explanation. While condoning the delay, the court should not forget the opposite party altogether. It must be borne in mind that he is a loser and he too would have incurred quite large litigation expenses. It would be a salutary guideline that when courts condone the delay due to laches on the part of the applicant, the court shall compensate the opposite party for his loss.'

9.As discussed above, the petitioner/companay has to lodge a complaint within the statutory period but there was a delay, since they misplaced the original documents. The reasons stated by the petitioner for delay are sufficient and the petitioner is having valid cause and justice shall not denied on mere technicalities. Therefore the reason assigned by the trial Judge was untenable.

10. Hence, the impugned order passed by the learned Judicial Magistrate, Thiruvottiyur in C.M.P No.3211 of 2017 is set aside. The learned Judicial Magistrate, Thiruvottiyur is directed to take cognizance of the complaint as per the manner know to law within a period of two weeks from the date of receipt of a copy of this order. Accordingly, it is allowed with condition that the petitioner/company is directed to pay a sum of Rs.10,000/- (Rupees Ten Thousand Only) as costs to the credit of Madras High Court Legal Services Committee and the said amount may be utilized by the office for improvement of infrastructures.

11.Accordingly this criminal Original petition is allowed.

Sd/-
Assistant Registrar(CO)

//True Copy//

Sub Assistant Registrar

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To:

1. The Judicial Magistrate, Thiruvottiyur.
2. The Chief Judicial Magistrate, Thiruvallur.



3. The Public Prosecutor,
Madras High Court, Chennai.

Copy To

The Secretary,
Madras High Court Legal Services Committee,
Chennai - 104.

+1cc to Mr.K.Madhan, Advocate, S.R.No.36057

+1cc to Mr.V.Selvaraj, Advocate, S.R.No.35292

Cr1.O.P.No.1573 of 2019

GPL (CO)
RLP (29/06/2022)