IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

127

CRM-M-43983-2022
Date of decision : 22.09.2022

Meenakshi ..... Petitioner

V/S

Housing Development Finance Corporation Ltd. ..... Respondent

CORAM : HON'BLE MR. JUSTICE ASHOK KUMAR VERMA

Present: Mr. Karan Choudhary, Advocate for the petitioner.

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ASHOK KUMAR VERMA, J. (ORAL)

The petitioner has filed the present petition under Section 407 read with Section 482 of the Code of Criminal Procedure, 1973 for transfer the petitioner bearing No.NACT/1124/2022 titled as 'Housing Development Finance Corporation Limited Vs. Meenakshi' filed by the respondent under Section 138 of the Negotiable Instruments Act, 1881 (for short 'the N.I. Act') from Chandigarh to Pathankot.

Brief facts of the case are that the petitioner is owner in possession of a single story residential house measuring 7 Marlas situated at Pathankot. The husband of the petitioner namely Vikramjeet Singh took loan from the respondent in the year 2018 amounting to Rs.90,00,000/- by mortgaging the house mentioned above. On 26.11.2020 husband of the petitioner was died and after his death the respondent issued demand notice to the applicant vide notice dated 06.09.2021 vide which they have demanded Rs.96,72,492/- from the petitioner. After demand notice, the respondent also sent notice dated 17.09.2021 under Section 13(2) of the Securitization and

Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 to the petitioner for repaying the loan amount to the respondent. The petitioner issued a cheque of Rs.2,00,000/- to the respondent Branch at Pathankot. When the respondent presented the cheque for encashment the same was dishonoured. Thereafter, the respondent filed the petition under Section 138 of the N.I. Act before learned Illaqa Magistrate, Chandigarh.

Learned counsel for the petitioner submits that the petitioner is residing at Pathankot and loan was issued to the husband of the petitioner by the respondent Branch Office, Pathankot. The petitioner issued a cheque of Rs.2,00,000/- to the respondent Branch at Pathankot. The respondent Branch, Pathankot took the cheque as security and without intimating the petitioner, they presented the cheque for encashment through their Head Office at Chandigarh i.e. the respondent. The petitioner have two minor children and in her absence there is no one in the family to look after her children. The distance between Pathankot and Chandigarh is about 240 kms. and just to harass and pressurize the petitioner knowing well that she is a widow and the mother of two minor children, the respondent file the petition under Section 138 of the N.I. Act at Chandigarh.

I have heard learned counsel for the petitioner and gone through the paper-book.

Section 142 of the N.I. Act provides for taking cognizance of offences punishable under Section 138 of the N.I. Act which reads as under:-

"***142. Cognizance of offences.***—

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138:

[Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account."

A perusal of the aforesaid provisions of Section 142(2)(b) of the N.I. Act clearly provides that the offence under Section 138 of the N.I. Act shall be inquired into and tried by a Court within whose local jurisdiction, if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the branch of the drawee bank where the drawer maintains the account, is situated. Indisputably, in the present case, the respondent presented the cheque for payment at the Head Office at Chandigarh where the same has been dishonoured.

It is well settled proposition of law that the moment when cheque is dishonoured by the drawee bank, offence under Section 138 of the N.I. Act attracted, hence since the offence is committed at the place of drawee bank, the Court situated therein will have jurisdiction.

Moreover, no status of the children with regard to their age and schooling has been mentioned in the present petition.

In view of the above, I find no ground for transfer of the case from Chandigarh to Pathankot in the present petition.

Dismissed.

22.09.2022 **(ASHOK KUMAR VERMA)**
kothiyal **JUDGE**

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