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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: 27.09.2022

Judgment delivered on: 19.10.2022

+ CRL. APPEAL NO.491/2022

NARESH CHAND JAIN

..... Appellant

Through: Mr.Abhinash Kumar Mishra and
Mr.Gaurav Kr. Pandey, Advocates.

versus

**STATE OF NCT OF DELHI AT NEW DELHI
& ANR.**

..... Respondents

Through: Mr.D.S. Dagar, APP for State.

CORAM:

HON'BLE MR. JUSTICE ANOOP KUMAR MENDIRATTA

J U D G M E N T

ANOOP KUMAR MENDIRATTA, J.

1. Appeal under Section 378 Cr.PC has been preferred on behalf of the appellant for setting aside order dated 25.02.2021 passed by the learned MM, Central District, Tis Hazari in *Naresh Chand Jain Vs. M/s Zasfa Packaging*, whereby the cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'the said Act') was declined and the complaint was held to be not maintainable.

2. In brief, as per the case of the appellant, a cheque bearing No. 140118 dated 15.03.2020 for an amount of Rs.8,85,600/- was issued by the accused/respondent No. 2 as part liability outstanding against the arrears of rent in favour of the appellant. The cheque was deposited on 15.03.2020 by the appellant in his bank account maintained in State Bank of India, which

was returned unpaid with the remarks 'PAYMENT STOPPED BY DRAWER' as per the cheque return memo dated 17.03.2020. The legal notice was sent by the complainant/appellant to the accused/respondent on 20.10.2020 and complaint was thereafter filed on 10.11.2020 under Section 138 of the said Act before the learned MM, Central District, Tis Hazari. It is claimed by the appellant that legal notice could not be issued within stipulated period under Section 138 of the Act due to Covid-19 situation and prevailing lockdown.

3. It is further the case of the appellant that Hon'ble Supreme Court of India vide order dated 23.03.2020 passed in Writ Petition (Civil) No(s).3/2020 took *suo motu* cognizance and the period of limitation for the legal proceedings was extended from 15.03.2020 till further orders in view of challenges faced by the country on account of COVID-19 virus and resultant difficulties. Reference is also made to further directions passed by the Hon'ble Supreme Court vide orders dates 08.03.2021, 27.04.2021, 23.09.2021 and 10.01.2022 in *Suo Motu Writ Petition (Civil) No(s).3/2020*.

It is urged that the learned Trial Court wrongly refused to take the cognizance relying upon judgment passed by the Hon'ble Supreme Court in ***Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.***, Civil Appeal Nos.3007-3008 of 2020 decided on 18.09.2020. It is further submitted that the period of limitation of 45 days involved in the aforesaid appeal had expired on 02.02.2020 i.e. prior to the orders in *Suo Motu Writ Petition (Civil) No(s).3/2020* and it was held by the Hon'ble Supreme Court that what was extended with reference to the order dated 23.03.2020 by the Hon'ble Supreme Court was only the period of limitation

and not the period up to which the delay can be condoned in exercise of discretion conferred by the proviso to Section 421 (3) of the Companies Act, 2013.

4. It may be observed that in the present case, vide order dated 25.02.2021, learned MM declined to give benefit of extension of limitation after exclusion of period from 17.03.2020 till 20.10.2020, in terms of directions issued by the Hon'ble Supreme Court in **Suo Motu Writ Petition (Civil) No(s).3/2020** vide order dated 23.03.2020 on the ground that no post/courier was suspended and notice could be issued by electronic form. It was also observed by learned MM that the Court does not have power to condone the delay in sending the legal demand notice as per proviso (b) of Section 138 of N.I. Act. It was further interpreted that if contention of complainant is accepted than 15 days period from the receipt of legal demand notice to pay the cheque amount, shall also stand extended, in which case the present complaint would be premature and liable to be dismissed on that account. Reliance was also placed upon judgment passed by Hon'ble Supreme Court in *Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.*, Civil Appeal Nos.3007-3008 of 2020. It was held by learned MM that time provided under proviso to Section 138 of the N.I. Act has not been enlarged by virtue of orders dated 23.03.2020 & 06.05.2020 and only period of limitation to file complaint under Section 142 of the N.I. Act has been enlarged. Further, since the legal demand notice was not sent within the prescribed period of 30 days, the complaint is not maintainable.

5. I have given considered thought to the contentions raised.

It may be appropriate to notice that the proviso to Section 138 of the Negotiable Instruments Act, 1881 provides that nothing contained in Section 138 shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

In view of above, for an offence under Section 138 of the said Act, one of the essential requirements, as per Clause (b) of proviso to Section 138 is that payee/holder in due course of the dishonoured cheque should have made a demand for the payment of the said amount of money (cheque amount) by giving a notice in writing to the drawer of the cheque within 30 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid. Admittedly, in the present case, the return of the cheque was vide memo dated 17.03.2020 and as such, the notice was required to be given within 30 days of 17.03.2020. Further, the notice was issued only on 20.10.2020.

6. At the outset, it may be apt to refer to orders dated 23.03.2020, 08.03.2021 and 10.01.2022 passed by the Hon'ble Supreme Court in Suo

Motu Writ Petition (Civil) No(s).3/2020 and may be beneficially reproduced:

(i) Directions issued vide order dated 23.03.2020 by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No(s).3/2020:

"This Court has taken Suo Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State).

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunals across the country including this Court, it is hereby ordered that a period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

We are exercising this power under Article 142 read with Article 141 of the Constitution of India and declare that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

This order may be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

Issue notice to all the Registrars General of the High Courts, returnable in four weeks."

(ii) Directions issued vide order dated 08.03.2021 by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No(s).3/2020

"2. We have.....

1. In computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021.

2. In cases where the limitation would have expired during the period between 15.03.2020 till 14.03.2021, notwithstanding the actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 15.03.2021. In the event the actual balance period of limitation remaining, with effect from 15.03.2021, is greater than 90 days, that longer period shall apply.

3. The period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.

4. The Government of India shall amend the guidelines for containment zones, to state.

“Regulated movement will be allowed for medical emergencies, provision of essential goods and services, and other necessary functions, such as, time bound applications, including for legal purposes, and educational and job-related requirements.”

(iii) Directions issued vide order dated 10.01.2022 by the Hon’ble Supreme Court in Suo Motu Writ Petition (Civil) No(s).3/2020

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5. Taking into consideration the arguments advanced by learned counsel and the impact of the surge of the virus on public health and adversities faced by litigants in the prevailing conditions, we deem it appropriate to dispose of the M.A. No. 21 of 2022 with the following directions:

I. The order dated 23.03.2020 is restored and in continuation of the subsequent orders dated 08.03.2021, 27.04.2021 and 23.09.2021, it is directed that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasi-judicial proceedings.

II. Consequently, the balance period of limitation remaining as on 03.10.2021, if any, shall become available with effect from 01.03.2022.

III. In cases where the limitation would have expired during the period between 15.03.2020 till 28.02.2022, notwithstanding the

actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022. In the event the actual balance period of limitation remaining, with effect from 01.03.2022 is greater than 90 days, that longer period shall apply.

IV. It is further clarified that the period from 15.03.2020 till 28.02.2022 shall also stand excluded in computing the periods prescribed under Sections 23 (4) and 29A of the Arbitration and Conciliation Act, 1996, Section 12A of the Commercial Courts Act, 2015 and provisos (b) and (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws, which prescribe period(s) of limitation for instituting proceedings, outer limits (within which the court or tribunal can condone delay) and termination of proceedings.”

7. Thus, it is imperative to note that vide order dated 08.03.2021, directions were also issued by the Hon’ble Supreme Court that the period from 15.03.2020 till 14.03.2021 shall also stand excluded in computing the period prescribed under Section 23(4) and Section 29(A) of the Arbitration and Conciliation Act, 1996, Section 12(A) of the Commercial Courts Act, 2015 and proviso (b) & (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws which prescribed period of limitation in instituting proceedings, outer limits within which the Court or Tribunal can condone the delay and termination of proceedings.

8. So far as the presentation of the cheques within the period of its validity is concerned, no directions for extension of any such period was made by the Hon’ble Supreme Court with reference to proviso to clause (a) of Section 138 of the Negotiable Instruments Act. However, the period prescribed under proviso (b) & (c) of Section 138 of the Negotiable Instruments Act, 1881 and any other laws which prescribed period of limitation for instituting the proceedings, outer limits within which the Court

or Tribunal can condone the delay and termination of proceedings from 15.03.2020 to 14.03.2021 were directed to be excluded. As such, the payee or holder of the cheques in due course as the case may be could demand the payment of the said amount of money by giving a notice in writing to the drawer of the cheque after excluding the period between 15.03.2020 to 14.03.2021 in computing the period of limitation of 30 days.

9. Reverting back to the facts of the present case, admittedly, the cheque in the present case was deposited on 15.03.2020 and cheque was returned unpaid vide return memo dated 17.03.2020. The legal notice was sent by the complainant/appellant to the accused/ respondent on 20.10.2020. By virtue of directions passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No(s).3/2020 vide order dated 23.03.2020 read with order dated 08.03.2021, the computation of period for sending the legal notice within 30 days from 17.03.2020 to 20.10.2020 should have been excluded for the purpose of proceedings under Section 138 of the Negotiable Instruments Act.

It may further be noticed that the respondent has failed to make the payment within stipulated period of 15 days after the notice was sent by the complainant on 20.10.2020 and as such the complaint was instituted on 10.11.2020 within the stipulated period under Section 138 of the Negotiable Instruments Act.

10. While referring the extension of benefit of limitation in issuing notice under Section 138 of the Negotiable Instruments Act in terms of directions passed vide order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No(s).3/2020, learned Trial Court has placed reliance on judgment passed by

the Hon'ble Supreme Court in *Sagufa Ahmed & Ors. Vs. Upper Assam Plywood Products Pvt. Ltd. & Ors.* in Civil Appeal Nos.3007-3008 of 2020 decided on 18.09.2020.

It may be noticed that in the aforesaid case, the appellant therein had received the copy of the order on 19.12.2019 and choose to file the statutory appeal before the NCLAT on 20.07.2020 with an application for condonation of delay. The application was dismissed by the Appellate Tribunal on the ground that the Tribunal has no power to condone the delay beyond a period of 45 days.

It was noticed by the Hon'ble Supreme Court that under Section 421(1) of the Companies Act, the remedy of appeal to the Appellate Tribunal was provided against an order of NCLT and sub-Section 3 of Section 421 prescribed the period of limitation for 45 days in filing the appeal and proviso whereunder conferred a limited jurisdiction to condone the delay in extending 45 days upon subjective satisfaction of the Tribunal that the appellant was prevented by sufficient cause from filing the appeal within that period. It was observed that from 19.12.2019, the date on which the certified copy was admittedly received by the learned counsel for the appellant, the period of limitation would start running, which expired on 02.02.2020. Further, the period of 45 days for condoning the delay started running from 02.02.2020 and expired on 18.03.2020. As such, since the lockdown imposed on 24.03.2020, there was no impediment for the appellant to file appeal on or before 18.03.2020. Thereafter, the second contention relied by the appellant with reference to order dated 23.03.2022 in Suo Motu Writ Petition (Civil) No(s).3/2020 was considered and it was observed that what

was extended vide aforesaid order was only the period of limitation and not the period upto which delay can be condoned in exercise of discretion conferred by the Statute.

In the aforesaid background, the contention to get over the failure to file an appeal on or before 18.03.2020 based upon the directions of the Hon'ble Supreme Court vide order dated 23.03.2020 in Suo Motu Writ Petition (Civil) No(s).3/2020 was held to be untenable.

11. A bare perusal of the orders passed by the Hon'ble Supreme Court in SMW(C) No.3/2020 reflects that the directions had been issued in exercise of powers under Article 142 read with 141 of the Constitution of India considering the fact that the country was facing challenges of communication on account of Covid-19 pandemic. The directions passed by the Hon'ble Supreme Court therein were for the benefit of litigants for the purpose of institution of cases by excluding the period mentioned in the said orders for the purpose of computing the limitation of the institution of the proceedings.

The order was for the benefit of the complainants, who had to institute the complaints. There was no embargo from instituting the complaints in case no such benefit of exclusion of limitation period was sought on behalf of the complainant, in case the proceedings were initiated within the period prescribed under proviso of Section 138 of the NI Act. It may be appropriate to reiterate the object underlying Section 138 of NI Act which is to give credibility to negotiable instruments in business transactions and to create an atmosphere of faith and reliance by discouraging people by dishonouring their commitments which are implicit when they pay their dues through

cheque. A gross injustice shall be incurred to the complainant/petitioner in case he is denied to exclude the period during 17.03.2020 till 20.10.2020 for the purpose of issuing of notice from the date of return memo i.e. 17.03.2020 till the date of issuance of notice i.e. 20.10.2020 in terms of directions issued by the Hon'ble Supreme Court of India in SMW(C) No.3 of 2020.

12. It may also be appropriate to refer to judgment passed by the Hon'ble Supreme Court in ***Prakash Corporates vs Dee Vee Projects Limited***, AIR 2022 SC 946, wherein the appellant had challenged the order passed by the High Court in declining the prayer of the defendant/appellant for granting further time to file its written statement after expiry of 120 days from the date of service of summons with reference to proviso 2 Order 8 Rule 1 of the CPC, 1908 as substituted by the Commercial Courts Act, 2015.

The Hon'ble Supreme Court while allowing the appeal observed as under:

“20. As regards the operation and effect of the orders passed by this Court in SMWP No. 3 of 2020, noticeable it is that even though in the initial order dated 23.03.2020, this Court provided that the period of limitation in all the proceedings, irrespective of that prescribed under general or special laws, whether condonable or not, shall stand extended w.e.f. 15.03.2020 but, while concluding the matter on 23.09.2021, this Court specifically provided for exclusion of the period from 15.03.2020 till 02.10.2021. A look at the scheme of the Limitation Act, 1963 makes it clear that while extension of prescribed period in relation to an appeal or certain applications has been envisaged Under Section 5, the exclusion of time has been provided in the provisions like Sections 12 to 15 thereof. When a particular period is to be excluded in relation to any suit or proceeding, essentially the reason is that such a period is accepted by law to be the one not referable to any indolence on

the part of the litigant, but being relatable to either the force of circumstances or other requirements of law (like that of mandatory two months' notice for a suit against the Government¹⁰). The excluded period, as a necessary consequence, results in enlargement of time, over and above the period prescribed.

20.1. Having regard to the purpose for which this Court had exercised the plenary powers Under Article 142 of the Constitution of India and issued necessary orders from time to time in SMWP No. 3 of 2020, we are clearly of the view that the period envisaged finally in the order dated 23.09.2021 is required to be excluded in computing the period of limitation even for filing the written statement and even in cases where the delay is otherwise not condonable. It gets perforce reiterated that the orders in SMWP No. 3 of 2020 were of extraordinary measures in extraordinary circumstances and their operation cannot be curtailed with reference to the ordinary operation of law.

20.2. In other words, the orders passed by this Court on 23.03.2020, 06.05.2020, 10.07.2020, 27.04.2021 and 23.09.2021 in SMWP No. 3 of 2020 leave nothing to doubt that special and extraordinary measures were provided by this Court for advancing the cause of justice in the wake of challenges thrown by the pandemic; and their applicability cannot be denied in relation to the period prescribed for filing the written statement. It would be unrealistic and illogical to assume that while this Court has provided for exclusion of period for institution of the suit and therefore, a suit otherwise filed beyond limitation (if the limitation had expired between 15.03.2020 to 02.10.2021) could still be filed within 90 days from 03.10.2021 but the period for filing written statement, if expired during that period, has to operate against the Defendant.

20.3. Therefore, in view of the orders passed by this Court in SMWP No. 3 of 2020, we have no hesitation in holding that the time limit for filing the written statement by the Appellant in the subject suit did not come to an end on 06.05.2021.”

It was also noticed that the decision in *Sagufa Ahmed (Supra)* in Civil Appeal Nos.3007-3008 of 2020 was rendered by three Judge Bench of this Court much before the final orders dated 08.03.2021 and 27.09.2021 in Suo Motu Writ Petition (Civil) No(s).3/2020 by another three Judge Bench of this Court. Further, in those final orders the Hon'ble Supreme Court not only preferred for the extension of period of limitation but also made it clear that in computing the period of limitation for any suit/appeal/application/proceedings, the period from 15.03.2020 to 21.10.2021 shall stand excluded. It was further observed that such a proposition of exclusion occurred in the latter orders pending before the Hon'ble Supreme Court while *Sagufa Ahmed (Supra)* was decided much earlier, i.e. on 18.09.2020. The case of *Sagufa Ahmed (Supra)* was also distinguished since the extendable period in the case of *Sagufa Ahmed (Supra)* was upto 18.03.2020 and it was found that the lockdown was imposed only on 24.03.2020 and there was no impediment in filing the appeal on or before 18.03.2020.

13. In view of above, the order passed by the learned Trial Court declining to take cognizance in the proceedings initiated before Trial Court under Section 138 of the Negotiable Instruments Act appears to be erroneous, on taking into consideration the order dated 08.03.2021 passed by the Hon'ble Supreme Court in Suo Motu Writ Petition (Civil) No(s).3/2020.

14. The present appeal is accordingly allowed and the order passed by the learned Trial Court, refusing to take cognizance is set aside. Learned Trial Court is further directed to compute the period of limitation after excluding the period as per cheque return memo dated 17.03.2020 till 20.10.2020 and to proceed in accordance with law.

15. A copy of judgment be forwarded to the learned Trial Court and be also circulated to the Subordinate Courts for information.

(ANOOP KUMAR MENDIRATTA)
JUDGE

October 19, 2022/A



Signature Not Verified

Digitally Signed
By: DINESH CHANDRA
Signing Date: 19.10.2022
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