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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.1071 OF 2023

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Renuka w/o. Ashwin Sheth

... Petitioner

V/s.

The State of Maharashtra & Anr.

... Respondents

Mr. Ashok Mundargi, Senior Advocate with Mr. Jayant Bardeskar, Mr. Gaurav Srivastav, Ms. Manorama Mohanty, Ms. Priyanka Gharge, Ms. Anamika Singh and Ms. Simeen Shaikh i/by S.K. Srivastav & Co. for the petitioner.

Ms. M.R. Tidke, APP for respondent no.1/State.

Mr. Shirish Gupte, Senior Advocate with Mr. Aabad Ponda, Senior Advocate, Mr. Subodh Desai, Mr. Amit Gagh, Mr. Bhavik Mehta and Ms. Prakruti Joshi i/by Dhruve Liladhar & Co. for respondent no.2.

CORAM : AMIT BORKAR, J.

DATED : MARCH 29, 2023

RC.:

1. The challenge in this writ petition is to the order dated 30th December 2022 passed by the revisional Court in a proceeding under section 138 of the Negotiable Instruments Act, 1881 (hereafter “NI Act”, for short) setting aside order of issuance of process dated 17th June 2022 passed by Metropolitan Magistrate, 48th Court, Andheri, Mumbai in CC No.1831/SC/2022 mainly on the ground that there was no legally enforceable debt on the date

of presentation of the complaint assuming the averments in the complaint are accepted as true.

2. Relevant facts necessary for the adjudication of the issue involved are as under:

The petitioner is original complainant who had filed an application under section 138 of the NI Act. The basis of alleging legally recoverable debt is pleaded in paragraphs 4, 7 and 8 of the complaint. Reading of paragraphs 4, 7 and 8 leaves no manner of doubt that the basis of legally recoverable liability was settlement agreement between the parties arrived at in the month of January 2022. In paragraph 7, the basis of liability is pleaded referring to letter dated 12th January 2022, which, according to the complainant, confirms issuance and acknowledging liability of cheque.

3. It is undisputed fact that the settlement agreement arrived at between the parties referred in paragraph 4 of the complaint is unsigned agreement. To confer status of agreement under the provisions of the Indian Contract Act, 1872, it is essential that parties must sign the agreement. In absence of such signatures, the document cannot be termed as agreement. Absence of agreement does not create right or liability on a person.

4. Reading of paragraphs 7 and 8 makes it clear that the next attempt to cast liability on the accused is based on letter dated 12th January 2022. The paragraph, which, according to the complainant, is relevant to arrive at conclusion that said letter is independent contract reads as under:

“In the event the sale of Sheth Developers & Realtors (India) Limited (“DDRIL”) is completed and RAS does not receive the sum of Rs.50,00,00,000/- (Rupees Fifty Crores only) from ANS as per the terms of aforementioned settlement agreement, then VBG confirms and guarantees to honor the said cheque and make good the payment of the said amount to RAS”.

5. Careful perusal of the clause in the letter makes it clear that the liability to honor the cheque is based on the settlement agreement. The earlier part of paragraph has been qualified by expression ‘as per the terms of aforesaid settlement’. The next sentence starts with the word ‘Then’. Therefore, in my opinion, it is clear that the letter dated 12th January 2022 does not create independent agreement or contract to create liability on accused to pay amount of Rs. 50 Crore. Said letter only recognizes alleged liability based on unsigned agreement.

6. Undisputedly, apart from paragraphs 4 and 7 there are no averments which create independent legally recoverable liability which can be termed as basis for honoring the cheque.

7. The revisional Court based on admitted documents recorded a finding that there is no legally recoverable liability. Normally in a complaint under section 138 of the NI Act, legally recoverable liability is essentially a question of fact. However, in the facts of the case in view of undisputed documents on record and material averments in the complaint, existence of legally recoverable liability is pure question of law.

8. The revisional Court relying on the judgment of the Apex

Court in **Sunil Todi v. State of Gujarat** reported in 2021 SCC OnLine SC 1174 held that the payment of debt was dependent on happening of event which never occurred and, therefore, there is no legally recoverable liability. In my opinion, in absence of legally enforceable document or any other averment in the complaint which alleges independent liability apart from unsigned document, the view taken by the revisional Court is legal and proper.

9. There is no error of jurisdiction or patent illegality. The writ petition is dismissed. No costs.

10. It is made clear that the observations made above are in relation to adjudication of issue involved and shall not be treated as conclusive for any other purpose.

(AMIT BORKAR, J.)