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Crl.R.C.No.451 of 2020

IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated : 13.04.2023

CORAM :

THE HONOURABLE Dr. JUSTICE G.JAYACHANDRAN

Crl.R.C.No.451 of 2020

and

Crl.M.P.No.3459 of 2020

N.Shanmugavel

.. Petitioner

Vs.

1.M/s.Mocking Bird International,
A Partnership Firm, represented by its partner,
K.Dhavanamanidevi,
W/o.Kanagaraj,
No.8, Eswaramoorthy Nagar,
7th Street, Tirupur-641 604.

2.K.Dhavanmanidevi

3.A.Kanagaraj

..Respondents

Prayer : Criminal Revision Case has been filed under sections 397 read with 401 of Criminal Procedure Code to set aside the order dated 21.02.2020 passed in Crl.M.P.No.5670 of 2019 in unnumbered C.C.No... of 2019 on the file of the Judicial Magistrate-I, Tiruppur.

For Petitioner : Mr.R.Bharathkumar
For Respondents : No appearance



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ORDER

This Criminal Revision Case is filed being aggrieved by the dismissal of the condone delay petition filed under Section 142 of Negotiable Instruments Act by the revision petitioner before the learned Judicial Magistrate-I, Tirupur to condone the delay of 18 days in preferring his complaint under Section 138 of Negotiable Instruments Act.

2. The cheque for Rs.50 lakhs dated 14.06.2019 alleged to have been issued by the respondents to discharge the debt he owes to the complainant. According to the complainant the said cheque was presented for collection for the first time on 17.06.2019 which got returned and at the request of the accused, it was represented subsequently on 28.06.2019 and again on 02.07.2019. On all the three occasions the cheque dishonoured. Hence, for the first time statutory notice dated 06.07.2019 was issued to the accused, calling upon them to pay the cheque amount within a period of 15 days, failing which, they will face the consequence under Section 138 of N.I.Act. The said statutory notice has been received by the accused on 09.07.2019 and they have given a reply through their Lawyer dated 22.07.2019, denying the liability. The



complainant has given a rejoinder reply notice through his lawyer dated 29.07.2019. The said rejoinder was received by the accused on 31.07.2019.

3. Taking the date of receipt of the rejoinder notice as the date to reckon limitation complaint has been filed with the condone delay petition saying that there is 18 days delay in preferring the complaint and the same has to be condoned. The respondent has filed a counter to the condone delay petition pointing out that, the cheque dated 14.06.2019 was presented thrice and after the 3rd return, statutory notice was issued for the first time on 06.07.2019 as per Section 138 of N.I.Act. The said notice was received by the accused on 09.07.2019. Therefore, on expiry of 15th day, cause of action to file complaint commences i.e., the limitation commences from 24.07.2019. As per Section 142 of N.I.Act, the complaint ought to have been filed within 30 days from the date of cause action. However, the complaint was presented only on 04.10.2019. The number of days delayed not properly calculated and the reason for condone the delay has also not been satisfactorily explained.

4. The Trial Court, after considering the provisions of law as stated in Section 138 and 142 of N.I.Act, besides the ruling of the Hon'ble Supreme



Court, has held that the cause of action to institute the complaint under Section 138 of N.I.Act arise after expiry of 15 days from the date of receipt of the statutory notice by the accused.

5. For return of cheque, there can be only one statutory notice. The subsequent notice or subsequent return of cheque will not save the running of limitation. The limitation has to be reckoned on the receipt of the first statutory notice and not on second statutory notice. At the same time, till the statutory notice is caused, the complainant is entitled to represent the cheque as many times as he wishes till the cheque become stale i.e., on expiry of 3 months from the date of cheque. Thus, having made clear the legal position, while applying the facts of the case in hand. The Trial Court has rightly found that the complainant, who had caused statutory notice on 06.07.2019, which was received by the accused on 09.07.2019 ought to have filed his complaint after expiry of 15 days i.e., on 24.07.2019, but before expiry of 30 days i.e., on 24.08.2019, whereas, he has filed the complaint only on 04.10.2019, but his condone delay application gives explanation only for 18 days.

6. The Court below has rightly taking note of the fact that, when the



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second notice dated 29.07.2019 issued by the complainant, the cause of action to file complaint has already arisen the rejoinder notice does not give any fresh cause of action to reckon limitation from that date. Therefore, the finding of the Court below dismissing the condone delay petition for not properly calculating the days of delay and not properly explaining the cause for delay is correct, legal and sustainable. Hence this Criminal Revision Case is dismissed.

13.04.2023

Internet : Yes/No.
Index : Yes/No.

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To

The Judicial Magistrate-I, Tiruppur.

Dr.G.JAYACHANDRAN, J.

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