

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-8371-2019

Reserved on:-17.05.2023

Pronounced on:- July 03, 2023

Prem Arora

....Petitioner

vs.

M/s Dewan Housing Finance Co. Ltd. & another

....Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vivek Suri, Advocate, for the petitioner.

Mr. Harsh Chopra, Advocate, for respondents.

HARKESH MANUJA J.

1. By way of present petition filed under Section 482 Cr.P.C., prayer has been made for quashing of order dated 09.03.2018 passed by the Court of Addl. Sessions Judge, Faridabad; whereby revision petition filed at the instance of respondents was allowed and the matter was remanded back to the trial Court for passing a fresh order upon the summoning of respondents.

2. Briefly the facts stated in the complaint are that M/s Adel Landmarks Limited (hereinafter referred to as 'developer') announced a real estate project in the name of "Era Divine Court" Sector 76, Faridabad in the year 2011; on its inducement the complainant i.e. the petitioner booked one flat No.1508, Tower A-2, Sector 76, Faridabad and made payment of Rs.24,99,549/- after obtaining a loan for a sum of Rs.15,88,400/- from respondent No.1. It has been further stated in the complaint that the developer and its Director/Managing Director, in collusion with respondent No.1 cheated the petitioner and other innocent

buyers having made illegal gains. The relevant portion of allegations against the respondents as made out in Para 5 of the complaint are reproduced hereunder:-

“That the accused No.1-7 in collusion with the accused no.8 i.e. M/s DHFL Ltd. (hereinafter referred to as DHFL) has cheated the present complainant herein along with several other innocent buyers and have made illegal gains to the tune of about Rs.100 to 150 crores. It is pertinent to mention here that the accused no.1-7 have lured the buyers to fall in their traps through their own assurances, various newspaper advertisements, personal visits of their officials etc. and thus have dishonestly induced the complainant and several other buyers to spend large sums of their hard earned money into their project on the basis of fake and false projections made by them Copy of brochure circulated by the accused at the initial stage of the project is annexed herewith as “Annexure B(Colly)”.

3. In the aforesaid complaint, respondents, besides four others were summoned to face trial under Section 420 of IPC vide order dated 10.07.2017 passed by Court of JMFC, Faridabad. The aforesaid order was challenged before the revisional Court at the instance of respondents which was allowed vide order dated 09.03.2018; whereby the trial Court was directed to pass a fresh order qua the revisionist. Operative portion from Para 13 thereof is reproduced hereunder:-

“The learned trial Court has failed to appreciate above said facts, hence, impugned order qua the revisionist is not sustainable and the present revision is hereby allowed and impugned

order is hereby set aside qua revisionsists. However, the learned trial Court is directed to pass a fresh order qua revisionists in accordance with law.”

4. In pursuance thereof, the trial Court while passing fresh order dated 04.04.2018, directed to drop the proceedings qua the respondents herein, followed by issuance of bailable warrants against others, arrayed as accused Nos.1, 2, 4 and 6 in the complaint. By way of present petition the petitioner has challenged the order dated 09.03.2018 passed by the revisional Court; whereby the matter was remanded back to the trial Court upon setting aside of the summoning order dated 10.07.2017.

5. Learned counsel for the petitioner submits that the revision petition against the summoning order dated 10.07.2017 was filed after an inordinate delay and that too without filing any application for condoning the same and thus, it could not have been entertained on merits. He further submits that revisional Court while passing order dated 09.03.2018 travelled beyond its jurisdiction as the defence raised by the respondents was not to be considered at the summoning stage and in this regard he relies upon a decision rendered by the Hon'ble Supreme Court in ***“Mrs. Priyanka Srivastava and Anr. Vs. State of UP and Ors.”*** reported as **(2015) 6 SCC 287**. Learned counsel further submits that while passing order dated 04.04.2018, no fresh application of mind was even applied by the trial Court and the same was passed in a mechanical manner without considering the observations made by the revisional Court vide its order dated 09.03.2018. Learned counsel for the petitioner even relies upon Section 3 of the Limitation Act, 1963 to contend that infact it was duty of

the Court to have dealt with the plea of limitation on its own. In support thereof, learned counsel also places reliance upon judgment of this Court in “**Jagdish Chander @ Gurbachan Singh V. Satnam Singh and others**” in case bearing number CRR-770-2014.

6. On the other hand, learned counsel representing respondents submits that order dated 04.04.2018 passed by the trial Court upon remand whereby the proceedings qua the respondents have been dropped; has not been challenged in the present petition and in the absence thereof, this Court cannot go into its validity. Learned counsel further submits that there has been no delay in filing of revision petition against the summoning order dated 10.07.2017 and the same was filed within the statutory period from the date of its knowledge which as per respondents was 12.02.2018. Learned counsel also submits that the contention regarding revision being barred by limitation was never raised by the petitioner before revisional Court at Faridabad and thus, he was now estopped from raising this plea at this belated stage. Learned counsel for respondents also points out that even on merits, no offence was made out against respondents, they not being the only financier available for the purpose of giving loan to purchase flat. Learned counsel also submits that the present petition filed at the instance of petitioner on 14.02.2019 before this Court, impugning the order dated 09.03.2018 was required to be rejected being apparently barred by limitation. Learned counsel further submits that no detailed order was required to be passed by the Court below at the stage of summoning, post remand as the merits

already stood considered by the revisional Court while passing the remand order. In support of his submissions, learned counsel relies upon:

- i. **“Palwinder Raj Singh Vs. The State of Punjab”** reported as 2003(1) RCR (Criminal) 198.
- ii. **“Umesh Bansal Vs. M/S Dewan Housing Finance Co. Ltd. & another”** by Punjab and Haryana High Court in case bearing number CR-MM-21846 -2021
- iii. **“Satyajit Banerjee Vs. State of West Bengal”** reported as 2004 SCR 294.

7. I have heard learned counsel for the parties and gone through the paper book. I am unable to find much substance in the submissions made on behalf of the petitioner that the revision petition filed before the learned Session Court was to be dismissed being barred by limitation. In fact, material averments were duly made in the revision petition especially in para (vi) wherein it was mentioned that in respect of the complaint in question, no notice was received by respondents as they had changed their office and an intimation in this regard was duly published in the newspaper in the month of June, 2015 and brought to public notice. It was also mentioned in the revision petition that respondents acquired knowledge regarding complaint on 06.02.2018 and therefore, revision petition filed on 12.02.2018 was well within limitation. Relevant para (iv) from the revision petition is reproduced here:-

“iv) That the petitioner is having no Nexus or connection in the commission of the alleged offence however they came to know about their summoning when a call was received from a Police Official H.C. Surrender from his Mobile no. 8130645843 on 6.2.2018 on the land line bearing no. 0114962900 at the Regional Office of revisionists situated at Netaji Subhash Palace, New Delhi

and from there, the officials of revisionists have provided the mobile number of Law Officer Mr. Nikhil Bajaj to the said police official and then H.C. Surender made a call to Mr. Nikhil Bajaj and told about the said matter, thereafter Mr. Nikhil Bajaj inquired about the same from his local counsel Faridabad then the counsel for revisionists inquired the same from court and came to know about the impugned summoning order dated 10.07.2017 & pendency of the complaint in question and the summoning order was taken out from the internet and after that revisionists have filed the present revision hence the present revision is well within the limitation from the date of knowledge.”

Thus, in view of the aforestated categoric averment in the revision petition, there was no the requirement on the part of respondents to file an application for condonation of delay, nevertheless, if petitioner wanted to dispute the stand taken by the respondents, then it was obligatory for him to have raised that concern at that point of time. In such situation, the same being a disputed question of fact, learned Sessions Judge would have been bound to give a finding in this regard, however, at this stage it is relevant to mention here that no dispute in this regard was raised by the petitioner at that appropriate stage. In the absence of any contention in this regard, after taking notice of the submissions, made by learned counsel for the revisionists/ respondents, learned Session Court proceeded ahead on merits of the case, to which this Court finds no exception.

8. Further, there cannot be any doubt regarding the legal position as held by Hon'ble Apex Court in **Priyanka's** case (supra) that during enquiry u/s 202 of Cr.P.C., accused is not required to be joined,

nonetheless the observation made by the learned Sessions Judge in this regard is immaterial as the satisfaction was already recorded by it for remanding the case on the premise that the complainant, in his statement recorded on 01.09.2016 under Section 202 Cr.P.C., did not even whisper any allegation against the revisionist/ respondent. It was on this account that the matter was remanded back to the learned trial Court with a direction to pass fresh orders and issue summon only after checking that specific allegations should come forth from the complaint, which were but found missing in the case. Therefore, no fault can be found with the order of the learned Session Court and the matter was rightly remanded back to the trial court.

9. As regards the applicability of case law cited at the bar, it would rather be important to have a look at the initial para of **Priyanka's** case (supra) which bring forth the exact circumstances. In this case Hon'ble Apex Court highlighted the tendency of individuals to drag the officials of Finance Company in criminal cases, so as to pressurise them in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The case in hand is also similar, wherein the petitioner's account with respondent Finance Company was declared NPA around 2014. Relevant para from **Priyanka's** case (supra) is reproduced below:-

"The present appeal projects and frescoes a scenario which is not only disturbing but also has the potentiality to create a stir compelling one to ponder in a

perturbed state how some unscrupulous, unprincipled and deviant litigants can ingeniously and innovatively design in a nonchalant manner to knock at the doors of the Court, as if, it is a laboratory where multifarious experiments can take place and such skillful persons can adroitly abuse the process of the Court at their own will and desire by painting a canvas of agony by assiduous assertions made in the application though the real intention is to harass the statutory authorities, without any remote remorse, with the inventive design primarily to create a mental pressure on the said officials as individuals, for they would not like to be dragged to a court of law to face in criminal cases, and further pressurise in such a fashion so that financial institution which they represent would ultimately be constrained to accept the request for "one-time settlement" with the fond hope that the obstinate defaulters who had borrowed money from it would withdraw the cases instituted against them. The facts, as we proceed to adumbrate, would graphically reveal how such persons, pretentiously aggrieved but potentially dangerous, adopt the self-convincing mastery methods to achieve so. That is the sad and unfortunate factual score forming the fulcrum of the case at hand, and, we painfully recount."

10. Similarly, in **Umesh Bansal's** case (supra), this Court held that no offence at all was made out against the respondents who simply financed the flat in question in favour of petitioner under a tri-partite agreement and therefore, summoning of petitioner was wholly uncalled for. Equally important, it was even observed by the learned Session Court that in the facts of the present case, not only the complainant but the revisionists/ respondents are also sufferer on account of act and conduct of respondents no.1 to 7, who are arrayed as accused in the complaint.

Therefore, allowing this petition would amount to the abuse of the process of the court and negate the purpose for which power under Section 482 Cr.P.C. is supposed to be exercised.

11. Lastly, submission made by the learned counsel for the petitioner that order dated 04.04.2018 passed by learned Trial Court is also liable to be set aside as there is no application of mind, is also not worth consideration. Firstly, there is no such prayer in the petition to set aside the order dated 04.04.2018 & secondly, present petition was filed approximately after 01 year of the order dated 04.04.2018, and therefore, this petition is liable to be dismissed on account of delay and laches as well. This Court in **Palwinder's** case (supra) held that though there is no limitation for filing a petition under section 482 Cr.P.C., but in any case, petition should be filed within a reasonable period and if it is filed at belated stage, appropriate reason should be provided. In the present case, neither any application for condonation of delay has been filed; nor any reason, leaving aside the sufficient reason, has been brought on record explaining for such delay on the part of petitioner. Additionally, no interim stay was granted/ passed in the present case and presently when around 05 years have passed, it would not be in the interest of justice to set aside the entire proceeding at such a belated stage. Even in **Satyajit's** case (supra), it has been observed by Hon'ble Supreme Court that High Court shall exercise its jurisdiction, at the instance of the complainant, only in very exceptional cases.

In view of the discussion made above, no ground is made out to quash the order dated 09.03.2018. consequently, the present petition is dismissed.

12. Pending misc. application(s), if any, shall also stand disposed of.

July 03, 2023
sanjay

(HARKESH MANUJA)
JUDGE

Whether speaking/reasoned: Yes/No
Whether reportable: Yes/ No