IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

242

CRM-M-51793-2021 (O&M)
Date of decision: 12.05.2023

M/s Jindal Cotex Limited .....Petitioner

Versus

Punjab State Power Corporation Limited .....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Aalok Jagga, Advocate and
Mr. Harshit Anand, Advocate
for the petitioner.

Mr. Eeshan Garg, Advocate and
Mr. Raghav Gulati, Advocate
for the respondent.

****

MANJARI NEHRU KAUL, J. (ORAL)

1. The petitioner company is seeking quashing of complaint No.927 of 2015 dated 07.02.2015 titled as 'Punjab State Power Corporation Limited Vs. M/s Jindal Cotex Limited and others' (Annexure P-1) under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') which is pending before the learned Judicial Magistrate 1st Class, Ludhiana along with summoning order dated 01.04.2015 (Annexure P-2) and all consequential proceedings arising therefrom.

2. Learned counsel for the petitioner submits that the respondent corporation (hereinafter referred to as 'Corporation') claimed some dues on account of consumption of electricity by the petitioner company. Pursuant thereto the petitioner company presented 03 cheques bearing No.002397, 002398 and 002399 dated 21.10.2014

for ₹90 lakhs each totalling to ₹2.70 crores drawn on AXIS Bank Limited Sahnewal Branch, Ludhiana. However, the said cheques were dishonoured on presentation on account of insufficiency of funds. Thereafter, the Corporation filed a complaint under Section 138 (Annexure P-1) dated 07.02.2015 leading to the summoning of the petitioner company vide order dated 01.04.2015 (Annexure P-2). Learned counsel has submitted that during the pendency of the complaint in question, the parties had reached a settlement. As per the terms of the settlement, the petitioner was to deposit 12 post dated cheques by way of monthly instalments in the sum of ₹23,60,519/- each. The petitioner was further required to pay electricity charges in weekly advance mode. The petitioner had complied with the directions of the settlement and accordingly issued 12 post dated cheques out of which the first 05 cheques were honoured on presentation, however, the sixth cheque dated 19.10.2016 was dishonoured. Thereafter, the Corporation again filed a complaint dated 03.01.2017 (Annexure P-4) qua the dishonour of the cheque dated 19.10.2016. Learned counsel has vehemently argued that once a settlement had been arrived at between the parties with respect to the original complaint (Annexure P-1), the cause of action qua the said complaint (Annexure P-1) would no longer subsist. He has submitted that for any dishonour of cheque given pursuant to a settlement, remedy if any, would only lie by way of a subsequent complaint. Learned counsel has asserted that the case of the petitioner is squarely covered by the ratio of law laid down by Hon'ble Supreme Court in ***M/s Gimpex Private Limited Vs. Manoj Goel : 2021(4) RCR (Criminal) 404***.

3. Per contra, learned counsel appearing for the respondent Corporation while opposing the prayer and submissions made by the counsel opposite has submitted that 03 cheques which were issued by the petitioner were in discharge of its legal liability and it was a matter of record that they had been dishonoured by the bank on presentation. Learned counsel has argued that no doubt a settlement had been effected, but even thereafter in terms of the settlement another cheque on presentation was dishonoured. Therefore, the petitioner had again defaulted by not complying with the terms of the settlement and the original complaint thus was maintainable in the aforementioned circumstances. Learned counsel for the respondent Corporation, however, has not been able to dispute the ratio of law as laid down by Hon'ble Supreme Court in ***Gimpex Private Limited's case (supra)***.

4. I have heard learned counsel for the parties and perused the relevant material on record.

5. Admittedly, after the complaint (Annexure P-1) dated 07.02.2015 was instituted, a settlement was indeed arrived at between the parties. The short question which thus arises for consideration of this Court is whether the original complaint would be sustainable when a settlement had been admittedly arrived at between the parties and still further pursuant to the settlement between the parties, the first 05 cheques which were issued stood honoured; it was only the sixth cheque, issued on 19.10.2016, which was dishonoured.

6. The issue and the question of law involved in this case is no longer *res-integra* and stands settled by the Hon'ble Supreme Court in ***Gimpex Private Limited's case (supra)***. When a settlement had been

arrived at between the parties, proceedings qua the original complaint would not sustain. The terms and conditions of the settlement would, therefore, give rise to a fresh cause of action. In this regard, it would be apposite to reproduce the relevant extracts of ***Gimpex Private Limited's case (supra)***, which read as under:-

> *"40. Thus, in our view, a complainant cannot pursue two parallel prosecutions for the same underlying transaction. Once a settlement agreement has been entered into by the parties, the proceedings in the original complaint cannot be sustained and a fresh cause of action accrues to the complainant under the terms of the settlement deed. It has been urged by Mr V Giri, learned Senior Counsel, and Ms Liz Mathew, learned counsel, that parallel prosecutions would not lead to a multiplicity of proceedings, as in the present case, both complaints are being tried by the same court. This may be true for the case before us, however, this Court in Damodar S. Prabhu (supra) and Re: Expeditious Trial of Cases (supra) has recognized multiplicity of complaints as one of the major reasons for delay in trial of cases under Section 138 of the NI Act and the consequent choking of the criminal justice system by a disproportionate number of Section 138 cases. While it is true that the trial in this case is before one court, that is not necessarily the ground reality in all cases.*
>
> *41. XXXX XXXX XXXX*
>
> *42. XXXX XXXX XXXX*
>
> *43. XXXX XXXX XXXX*
>
> *44. XXXX XXXX XXXX*
>
> *45. XXXX XXXX XXXX*
>
> *46. Once a settlement agreement has been entered into between the parties, the parties are bound by the terms of the agreement and any violation of the same may result in consequential action in civil and criminal law.*
>
> *47. XXXX XXXX XXXX*
>
> *48. XXXX XXXX XXXX*
>
> *49. XXXX XXXX XXXX*
>
> *50. We are unable to accept the line of argument on two grounds. First, as held above, a settlement agreement effaces the original complaint and thus, it is not up to the parties, either complainant or accused, to simply reverse the effects of that agreement and relitigate the original complaint relating to the same underlying transaction*

under Section 138 of the NI Act.......”

7. As a sequel to the above discussion, the instant petition is allowed and the complaint in question as well as summoning order dated 01.04.2015 along with all consequential proceedings are quashed.

12.05.2023 (**MANJARI NEHRU KAUL**)
Vinay **JUDGE**

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