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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-M-48356-2022 (O&M)
CRM-15005-2023
Date of decision : 10.04.2023

GARG MALLEABLES INDIA PVT. LTD. AND OTHERS

…Petitioners

Versus

M/S RELIGARE FINVEST LTD.

…Respondent

CORAM: HON'BLE MR. JUSTICE HARSH BUNGER

Present : Mr. Naveen Bawa, Advocate
for the petitioners.

Mr. NitinThatai, Advocate
for the respondents.

HARSH BUNGER, J. (ORAL)

CRM-15005-2023

This is an application for placing on record Annexures R-6 to R-9.

For the reasons mentioned in the application, the same is allowed, as prayed for and Annexures R-6 to R-9 are taken on record, subject to all just exceptions.

CRM-M-48356-2022 (O&M)

Petitioners have filed the present petition under Section 482 of the Code of Criminal Procedure, seeking quashing of order dated 22.09.2022 (Annexure P-3) passed by learned Judicial Magistrate (Ist Class), Amloh, District Fatehgarh Sahib, whereby, application dated

12.09.2022 (Annexure P-2) for accepting the demand draft of Rs.1,31,920/- i.e. against the cheque in question, in proceedings under Section 138 of the Negotiable Instruments Act, 1881 (for short `N.I. Act) Case No.NACT-534/2015 dated 10.06.2015 (Annexure P-1) titled as ***M/s Religare Finvest Limited vs Garg Malleables India***, has been dismissed.

2. Petitioners have further challenged the order dated 01.10.2022 (Annexure P-4), whereby, the revision petition filed by themagainst said order dated 22.09.2022 (Annexure P-3) has also been dismissed.

3. Succinctly, the respondent (M/s Religare Finvest Limited) filed a complaint under Section 138 of the N.I. Act against the present petitioners on the plea that petitioners had availed the loan/finance facility from the respondent-complainant company, after executing the loan agreement; however, they failed to repay the loan amount and in discharge of their legal liability, a Cheque bearing No.398735 dated 01.04.2015 for a sum of Rs.1,31,920/.- drawn on OBC Bank, Mandi Gobindgarh was issued in favour of respondent-complainant. However, the afore-said cheque on its presentation with the bank has been dishonoured and returned vide Memo dated 08.04.2015 with the remarks “funds insufficient”; whereupon, the mandatory legal notice was issued and upon failure of the petitioners to re-pay the amount, the proceedings under Section 138 of the N.I. Act were initiated, wherein, the petitioners were summoned and subsequently, notice of accusation was also served upon them and the trial proceeded.

4. It appears that during pendency of the trial of the above-said case under Section 138 of the N.I. Act, the petitioners herein have filed application dated 12.09.2022 (Annexure P-2) before the trial Court for

accepting an amount of Rs.1,31,920/-, being the amount of the cheque in question and for rejecting the complaint under Section 138 of the N.I. Act.

5. The aforesaid application was dismissed by the trial Court vide order dated 22.09.2022 (Annexure P-3) by observing as under :-

> *" Perusal of the recorder transpires that through the present application, indirectly, the applicants are seeking compounding of the offence by relying upon the case law M/s Metres and Instruments Private Ltd. Versus Kanchan Mehta law finder Doc ID # 906718. The said case law has been gone through carefully and same is not applicable over the proposition in hand because the complainant is non banking finance company incorporated under the provisions of the Company Act, 1956. As per the version of the complainant, the loan was raised by the accused and same has not been returned yet. Now, the accused/applicants are seeking the compounding of the offence that too by the payment of only cheque amount which does not appeal to the mind that in such way, the complainant would be duly compensated.*
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> *More so, when the complainant has refused to compound the offence by accepting the only cheque amount offered by the accused/applicants, the application cannot be allowed. The court is guided by the law settled in* ***M/s Anant Tools (Unit no.II) Pvt. Ltd. and others vs M/s Anant Tools Pvt. Ltd. Jalandhar, CRM-M-17300 of 2017 (O&M)***, the Hon'ble Punjab & Haryana High Court at Chandigarh has held, "Admittedly, there is no consent for compounding on the part of the complainant, therefore, it was impermissible for the trial court to permit compounding merely on unilateral application moved by the petitioner/accused. Hence the trial court has not committed any illegality by declining the application for compounding."

It is important to mention here that while the aforementioned settled case was decided, the case law titled as M/s Metres and Instruments Private Ltd. Versus Kanchan Mehta law finder Doc ID # 906718, was also considered by Hon'ble Punjab and Haryana High Court and it was concluded that in the absence of the consent of the complainant, the compounding cannot be permitted. Therefore, the application dated 12.09.2022 stands dismissed."

6. Thereafter, the petitioners have filed the Criminal Revision Petition against the aforesaid order dated 22.09.2022 passed by the learned Judicial Magistrate Ist Class, Amloh, before the Court of Sessions Judge, Fatehgarh Sahib; however, the same was also dismissed vide order dated 01.10.2022, by observing as under :-

"3. I have heard learned counsel for the petitioner and have also gone through the record of the case attached with the petition. The present petitioner had moved application for accepting draft of Rs.1,31,920/- i.e. the cheque amount. No doubt the offence under Section 138 of Negotiable Instruments Act is compoundable but the offence can be compounded only with the consent of the complainant. In the present case, it is not disputed that complainant has not given any consent for compounding of offence. The perusal of the Order dated 22.09.2022 passed by the learned trial Court shows that learned trial Court categorically observed that complainant has refused to compound the offence by accepting only cheque amount offered by the accused/applicant/petitioner. It is well-settled proposition of law that without consent for compounding the offence by the complainant, the offence under Section 138 of Negotiable Instruments Act cannot be compounded unilaterally. Thus, the learned trial Court rightly declined the application filed by the petitioner for accepting the draft of Rs.1,31,920/-.

4. As a sequel to my above-discussion, this court find no illegality or infirmity in the impugned order dated 22.09.2022 passed by the learned trial Court and therefore, the present revision petition being devoid of any merit is dismissed. File be consigned to Record Room."

7. Accordingly, the petitioners have filed the present petition before this Court.

8. Learned counsel for the petitioners submits that the learned Courts below have wrongly dismissed the application dated 12.09.2022 (Annexure P-2) filed by the petitioners for payment of cheque amount in question and that the petitioners were ready and willing to settle the loan accounts.

9. On the other hand, learned counsel for the respondent submits that the petitioners had availed loan facility of Rs.24,00,000/- vide loan agreement No.XSMEMGO00015485 which has to be re-paid in 36 monthly installments @ Rs.87,070/- each w.e.f. 01.01.2011 to 01.12.2013. It is submitted that another loan of Rs.35,50,000/- was also taken by the petitioners vide loan agreement No.XSMEKHN00041043, which was also to be repaid in 36 monthly instalments @ Rs.1,31,920/- (each) w.e.f. 01.06.2012 to 01.05.2015 and as on 31.01.2023, the respondent-complainant company is to recover an amount of Rs.48,80,778,77/- in loan agreement No.XSMEMGO00015485 and Rs.1,65,89,330.97/- in loan agreement No.XSMEKHN00041043.

10. It is the stand of the respondents that the respondents had also initiated arbitration proceedings with regard to recovery of the other loan amounts, wherein, arbitration awards dated 22.07.2013 (Annexure R-6) and 20.06.2014 (Annexure R-7) have already been passed and execution applications have been filed therein; however, the petitioners herein are

intentionally not appearing in the said recovery proceedings and are delaying the matter.

11. Learned counsel for the respondents have further submitted that as on date, the total amount recoverable from the petitioners in respect of various loans extended to them, comes out to be more thanRs. 1.5 crores; however, the petitioners are not ready and willing to settle all the loan accounts and are proceeding selectively and that too without any real intent to settle the matter and the instant proceedings are only an attempt to delay the proceedings.

12. I have heard learned counsel for the parties and perused the paper book with their able assistance.

13. At the time of issuance of notice of motion, the following order was passed on 19.10.2022:-

> *" Today, the Lawyers have decided to abstain from appearing in the Court because of the call given by the Bar Association.*
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> *Petitioner No.3-Neelam Garg has appeared in person along with her son namely Bhavya and has stated before this Court that the petitioners are ready to pay an amount of Rs.2,75,000/- to respondent in lieu of cheque amounting to Rs.1,31,920/- which was issued on 01.04.2015. It is further submitted that an amount over & above Rs.1,31,920/- would be payable on account of compensation. It is also submitted that they are ready to finally settle the matter. It is also contended that the petitioners would bring a demand draft amounting to Rs.2,75,000/- prepared in the name of the complainant on the next date of hearing and has stated that in case, the said demand draft amounting to Rs.2,75,000/- is not produced on record by the petitioners on the next date of hearing then the present petition be dismissed with costs.*

Notice of motion for 01.11.2022.

To be taken up at 01:45 pm.

In the meantime, the Appellate Court is directed to give a date beyond the date fixed by this Court.

It is made clear that in case, the petitioners fail to bring demand draft amounting to Rs.2,75,000/- prepared in the name of complainant on the next date of hearing, then the present petition would be liable to be dismissed with costs."

14. Thereafter, vide order dated 10.11.2022, the matter was referred to the Mediation and Conciliation Centre of this Court to work out the modalities of the compromise but the mediation failed and the matter was again put up before this Court. However, again on 16.02.2023, a submission was made that the matter can be settled amicably but no headway was made in that regard.

15. It is apparent from the paper-book that the application dated 12.09.2022 (Annexure P-2) was filed for payment of Rs.1,31,920/- and despite the matter having been sent to the Mediation and Conciliation Centre of this Court, no amicable settlement was arrived at between the parties.

16. Since the matter could not be resolved amicably, accordingly, the prayer of the petitioners to accept only the cheque amount in question i.e. Rs.1,31,920/-, cannot be accepted without the consent of the respondents. In this regard, reference can be made to the judgment in ***M/s Nidhi Knitwears (P) Ltd. and Anr. Vs Honey Hosiery Mills 2022(3) R.C.R. (Criminal) 304***; wherein a Co-ordinate Bench of this Court while considering a similar issue, had discussed various judgments including the judgment rendered in case of ***M/s Anant Tools (Unit No.II) Pvt. Ltd. and others v. M/s Anant Tools Pvt. Ltd., Jalandhar, 2019(1) RCR (Criminal)***

137, wherein reliance was placed upon judgment of Hon'ble Supreme Court in ***JIK Industries Limited and others v. Amarlal V. Jumani and another, 2012(1) RCR (Criminal) 822***, which mandated the consent of the complainant for compounding of the offence under Section 138 of the Negotiable Instruments Act. Accordingly, it was held as under :-

> *" 14. Coming back to the facts of the present case, the cheques pertain to the year, 2011 totalling a sum of Rs.2,24,996/-. As per the learned counsel for the petitioners, the petitioners were willing to make a payment of Rs.4,00,000/-. This payment of Rs.4,00,000/- after ten years of the issuance of cheques, in the opinion of this Court, is grossly inadequate and is not sufficient to compensate the complainant so as to enable this Court to exercise its discretion to close the proceedings, particularly, in the circumstances, when the complainant is not willing to consent to compounding."*

17. In view of the above discussion, I do not find any merit in the present petition and the same is accordingly dismissed.

18. All pending application/s, if any, shall stand closed.

April 10th, 2023 **(HARSH BUNGER)**
gurpreet **JUDGE**

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