IN THE HIGH COURT AT CALCUTTA

(Criminal Revisional Jurisdiction)

APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

CRR 1872 of 2019

M/s. Biman Bangladesh Airlines Limited

Vs

M/s. Kuka Travels Private Ltd. & Ors.

For the Petitioner	:	Mr. Partha Chakraborty, Ms. Poulami Dutta.
For the Opposite Party No. 2 & 3	:	Mr. Aasish Choudhury, Ms. Minal Palana, Ms. Meera Agarwal.
For the Opposite Party No. 1/State	:	None.
Hearing concluded on	:	05.02.2024
Judgment on	:	28.02.2024

Shampa Dutt (Paul), J.:

1. The present revisional application has been preferred against an order dated 27.08.2018 passed by the Learned Metropolitan Magistrate 19th Court at Calcutta, in Complaint Case No. C/11294/12 (M/s. Biman Bangladesh Airlines Limited Versus M/s. Kuka Travels Private Limited & Ors.).

2. The petitioner M/s. Biman Bangladesh Airlines Limited is an International Airlines Company, incorporated and registered under the Companies Act of Bangladesh (Act XVIII) 1994 having its Registered Office at "BALAKA BHABAN", Dhaka, Bangladesh and being a Global Transport Company is carrying on its business through Branch Offices all over the World. In Eastern India, the Branch Office, is situated at 99A, Park Street, Siddha Park, 6th Floor, Kolkata – 700 016 and is being represented through it's Authorized Representative namely Shakia Sultana being duly authorized by virtue of Power of Attorney executed by the Director dated 15.04.2018.

3. The Opposite Party No. 1 is a Company, registered and incorporated under the Companies Act, 1956 having its Office at 4/1, Sudder Street, Kolkata – 700 016 and the Opposite Party No. 2 and Opposite Party No. 3 were the Directors of the Opposite Party No. 1 i.e. Company and were responsible for the day to day affairs as well as the business administration of the said Company at the relevant point of time, when the offence was committed.

4. That in discharge of business liabilities, the Opposite Party No. 1, the Company, Kuka Travels (P) Limited issued one Account Payee Cheque, being No. 281831 dated 22.02.2012 drawn on Bank of India, Lindsey Street Branch, Kolkata – 700 087, West Bengal, in favour of "Biman Bangladesh Airlines Limited", amounting to Rs. 17,44,421/- (Rupees Seventeen Lakhs Forty Four Thousand Four Hundred and Twenty One) only.

5. The said Cheque bears the Signature of the Opposite Party No. 2 being one of the Directors of the Opposite Party No. 1 and both the Opposite Parties No. 2 and Opposite Party No. 3 were well conversant regarding the issuance of cheque as they were responsible for day to day affairs of Opposite Party No.1.

6. The Opposite Party No. 2 and Opposite Party No. 3 at the relevant time also performed several business affairs of the Opposite Party No.1 as the Directors of the Opposite Party No.1.

7. The petitioner Company deposited the said Cheque within validity period, on 25.04.2012 for encashment of the said Cheque through its Banker "The Sonali Bank Limited", Park Street, Kolkata.

8. The Petitioner Company received an information from its Banker "The Sonali Bank Limited" on 26.04.2012 that the said Cheque which was deposited for encashment had been returned unpaid by the Banker of the Opposite Party No.1, i.e. Bank of India with the endorsement /remark “FUNDS INSUFFICIENT” alongwith the Cheque Return Memo dated 26.04.2012 issued by Bank of India, Service Branch, Kolkata.

9. After receiving such information, the Petitioner Company served a Legal Demand Notice through their Advocate’s Letter dated 04.05.2012 making demand for payment of said dishonoured Cheque Amount from the Opposite Parties within 15 days from the date of receipt of the said Notice. The said Notice was duly issued by Registered Post with A/D at the given last correct address with proper postal charges which was received by the Directors of the Opposite Party No. 1 Company being the Opposite Party nos. 2 & 3 on 08.05.2012. But the said Demand Notice was returned back unserved upon the Opposite Party No.1 to the Learned Advocate’s Office at 6, Old Post Office Street, 1st Floor, Kolkata. – 700 001.

10. The petitioner states that in spite of issuance of such Demand Notice for payment of the amount covered by the said Cheque, the Opposite Parties failed and neglected to make payment of the said amount, covered by the said dishonoured Cheque and thus the Opposite Parties had jointly committed an Offence punishable under Section 138 read with Section 141 of the Negotiable Instrument Act, 1881.

11. In the above facts and circumstances of the case, the petitioner filed a Petition of Complaint under Section 200 of the Code of Criminal Procedure for commission of the offences punishable under Sections

138/141 of the Negotiable Instrument Act, 1881 (as amended up-to-date) in the Court of the Learned Chief Metropolitan Magistrate at Calcutta which was registered as Complaint Case No. C/11294/12.

12. Subsequently the said Complaint Case was transferred before the Learned 19th Metropolitan Magistrate at Calcutta and after being satisfied as to the prima facie case of the petitioner, the Learned 19th Metropolitan Magistrate was pleased to issue summons upon the Opposite Parties for appearance before the Learned Court for facing the Trial.

13. After issuance of such process by the Learned Magistrate, the Opposite Party No. 2 and Opposite Party No. 3 duly appeared before the Learned Court and took necessary steps in accordance with law but the notice upon the opposite Party No.1 could not be served due to shifting of Office by the present management of the Opposite Party No. 1 to some other place which is absolutely unknown and not being disclosed to the petitioner, as a result whereof the Notice of Summon could not be served upon the Opposite Party No. 1, compelling it to appear before the Learned Court in connection with the above referred Complaint Case.

14. The petitioner further states that the Opposite Party No.1 continued its Business from the address mentioned in the Cause Title of the Complaint Case and the Cheque was also issued from the said Office Address of the Opposite Party No. 1 and as such the address of the Opposite Party No. 1

has been mentioned as the place last known to the petitioner, being the business place of the Opposite Party No.1.

15. From the letter of reply sent by the Learned Advocate of the Opposite Party Nos. 2 & 3, it appears that the Opposite Party nos. 2 & 3 claim to be the erstwhile Directors of the Opposite Party No. 1, and the 100% Shares of Opposite Party No.1, has been transferred in favour of other persons and as such they are now not in Connection/Charge with regard to the day to day business affairs of the Opposite Party No. 1 and as such they are not liable to be prosecuted and that the present place of business of the Opposite Party No. 1 is also not within their knowledge as at present they are not in charge of the business affairs of the Opposite Party No. 1.

16. Thereafter several steps were taken for Service of Summon upon the Opposite Party No.1 to compel its appearance before the Learned Magistrate including Order of Attachment.

17. The petitioner states that in terms of Section 65 of the Code of Criminal Procedure when a service cannot be effected in spite of due diligence as provided in Section 62, Section 63 or Section 64 the Serving Officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides, and hereupon the Learned Court, after making such inquiries as it thinks fit, may either declare that the Summon has been duly served or order fresh service in such manner as it considers proper.

18. The petitioner states that as per the above circumstances the service of the summon upon the Opposite Party No. 1 can only be effected if the Serving Officer affix one of the duplicates of the summons on some conspicuous part of the house or homestead where the Registered Office of the Opposite Party No.1 was situated when the dishonoured cheque was issued.

19. The petitioner had made an application for Substitute Service of Summons under Section 65 of the Code of Criminal Procedure, 1973, before the Learned 19th Metropolitan Magistrate at Kolkata on 14th July, 2018 but the said prayer made in the said application was turned down by the Learned Judge by holding that no such provision has been contemplated in the Code of Criminal Procedure with regard to substituted service summons.

20. Hence the revision.

21. Affidavit of service in respect of all the Opposite Parties **at the same address** are as follows:-

i) Opposite Party No. 1 – M/s. Kuka Travels Private Limited, addressee cannot be located.

ii) Opposite Party No. 2 – Mr. Manish Chowbey, Item delivered (addressee).

iii) Opposite Party No. 3 – Mr. Pradumn Kumar Chowbey, “Deceased”.

22. **It is thus clear that service upon Opposite Party No. 2 & 3 have been duly made at the same address as that of the Opposite Party No.1, Company of which the Opposite Party No. 2 & 3 are/were the directors.**

23. So, the contention of the Opposite Party No. 2 who has been duly served at the said address and is being represented, that they are no more the directors of the company has no force. **The cheque in this Case is dated 22.02.2012, when the company was in existence and the Opposite Parties were its directors.**

24. The cheque was issued on behalf of the Opposite Party no. 1, company by the Opposite Party No.2.

25. Basic information available in respect of the Company in this case and its status on the internet is **"Strike Off".**

26. A company status **"strike-off"** is an administrative process to dissolve a company or organization. This process is handled through the Registrar of Companies (ROC) and is used to remove a company from the register of companies.

27. Company Status Strike Off is a legal process, that a company's directors can initiate to close the business officially. When a business is voluntarily struck off, it is removed from the official register of companies, and its legal existence is ended.

28. Once the strike-off order is issued, the company's name will be removed from the Registrar's records and the company will no longer exist. This means that the company's assets will be distributed among its creditors according to the terms of the strike-off order. **The company's directors will also be liable for any liabilities that the company may have incurred while it was operational.**

29. This thus proves that the Opposite Party No.1/Company in this Case is no more in existence and as such the Company's directors, the Opposite Parties No. 2 & 3, (no. 3 is now deceased) herein are liable for the liabilities that the Company incurred while it was operational.

30. The order under revision is as follows:-

"Order dated : 27.08.18

Today is fixed hearing petition filed by the Complainant.

Ld. Advocate for the complainant submits that inspite of due diligence service upon accused No.1 could not be effected and inspite of due diligence the particulars of present directors of accused No.1 could not be ascertained and prays to pass an order directing the service officer affix one of the duplicates of the summons to some conspicuous part of the building where the registered office of the accused No. 1 was situated.

Perused the case record.

Considered. There is no provision in Cr.P.C. cause the service of summons to the accused by affixing copy of the said summons at the conspicuous part of building where the registered office of the company is situated.

Hence the petition is turned down.

Complainant is directed to take proper step.

Fixing 20/11/18 S.R.

Sd/-
Metropolitan Magistrate,
19th Court, Calcutta"

31. Section 65 of Cr.P.C. lays down:-

> ***"65. Procedure when service cannot be effected as before provided.-*** *If service cannot by the exercise of due diligence be effected as provided in Section 62, Section 63 or Section 64, the serving officer shall affix one of the duplicates of the summons to some conspicuous part of the house or homestead in which the person summoned ordinarily resides; and thereupon the Court, after making such inquiries as it thinks fit, may either declare that the summons has been duly served or order fresh service in such manner as it considers proper."*

32. Section 65 of the Code of Criminal Procedure (Cr.P.C.) deals with the service of summons. It states that if service cannot be effected as provided in Sections 62, 63, or 64 of the Cr.P.C., the serving officer shall affix one of the duplicates of the summons to a conspicuous part of the house or homestead in which the person summoned ordinarily resides. After making inquiries, the court may either declare that the summons has been duly served or order fresh service in a proper manner.

33. The section requires the court to apply its judicial mind and make inquiries before declaring the summons as duly served. The court must ensure that the summons has been served according to the prescribed methods and that due diligence has been exercised. The serving officer must provide an express declaration indicating that the summons has been duly served.

34. The section also emphasizes the importance of following the prescribed methods of service. If the summons is not served according to the court's directions, it cannot be presumed as valid service. The court must ensure that there has been an application of mind and due diligence in serving the summons.

35. Based on the provided data, it is evident that the court must conduct an inquiry and apply its judicial mind before declaring the summons as duly served. The serving officer must provide an express declaration, and the court must ensure that the summons has been served in accordance with the prescribed methods. Failure to comply with the prescribed methods may result in the service being deemed invalid.

36. In conclusion, Section 65 of the Cr.P.C. requires the court to make inquiries and apply its judicial mind before declaring a summons as duly served. The section provides for various methods of service, including service through the Indian embassy and affixation of the summons. It is essential to follow the prescribed methods and exercise due diligence in serving the summons to ensure its validity.

37. Though in this case the Company has been closed down as "struck off", the existence of the Company at the address provided at the time of the alleged offence is not denied.

38. The service through this Court at the addresses provided, supports the said "status" in respect of the Opposite Party No. 1/Company as the service has been returned with the endorsement, “Addressee cannot be located”. This also proves that the Company is now no more in existence (struck off).

39. The order under revision is thus not in accordance with law and is liable to be set aside. In the present case, the petitioner is thus entitled to invoke the provision of Section 65 Cr.P.C. in respect of the Opposite Party No. 1.

40. The word ‘person’, in Section 65 Cr.P.C. includes a ‘Company’ which is a juristic person and a legal entity.

41. CRR 1872 of 2019 is allowed.

42. The order dated 27.08.2018 passed by the Learned Court of 19th Metropolitan Magistrate at Calcutta, in Complaint Case No. C/11294/12 (M/s. Biman Bangladesh Airlines Limited Versus M/s. Kuka Travels Private Limited & Ors.), **is set aside.**

43. As the Company is admittedly not in existence (struck off), the Trial Court on applying/complying the appropriate provisions of law shall proceed against the company’ s directors/the accuseds herein in accordance with law.

44. All connected applications, if any, stand disposed of.

45. Interim order, if any, stands vacated.

46. Copy of this judgment be sent to the learned Trial Court for necessary compliance.

47. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(Shampa Dutt (Paul), J.)