2024:BHC-AUG:2262

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.123 OF 2022

Kanhur Pathar Co-operative Credit Society Ltd., Kanhur Pathar, A society registered under the provisions of The Maharashtra Co-operative Societies Act, 1960, Having it's office at : Kanhur Pathar, Taluka : Parner, District : Ahmednagar, Through its Authorized Officer, Shri Dilip Sitaram Thube, Age : 45 years, Occupation : Service, R/o as above.	}	... Applicant [orig. complainant]

Versus

Shri Pradeep Vishwanath Waghmare, Age : Major, Occupation : Business, R/o. : Parner, Taluka : Parner, District : Ahmednagar.	}	... Respondent [orig. Accused]

...

Mr. Surendra V. Suryawanshi, Advocate for Applicant
Mr. Yogesh P. Deshmukh, Advocate for Respondent

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 25th JANUARY, 2024

PRONOUNCED ON : 01st FEBRUARY, 2024

ORDER :

1. Getting dissatisfied by the Judgment and order of acquittal for offence punishable under section 138 of the Negotiable Instruments Act, 1881 dated 27.09.2019, original complainant is intending to prefer appeal and hence instant leave application.

2. It is submitted that, complainant is a co-operative credit society. Respondent accused obtained cash credit loan to the tune of Rs.3,00,000/-. Towards repayment accused issued cheque, but it came to be dishonoured and in spite of notice when cheque amount was not repaid within stipulated time, proceedings under section 138 of N.I. Act were instituted.

3. It is next submitted that, complainant had established his case by adducing its witness at Exh.30 and 54 and relied on ample and documentary evidence. He pointed out that even initial presumption under sections 118 and 139 of N.I. Act was in favour of complainant, but undue importance is given to account extract (Exh.51) and it has been held that, the complainant could not demonstrate that amount of Rs.12,575/- and Rs.17,014/- were due at the end of accused. There is improper appreciation of oral and documentary evidence. All necessary ingredients for recording guilt were available, but trial court acquitted the accused. There is a good case on merits in appeal and so he prays for leave.

4. Learned counsel for respondent would submit that, complainant failed to make out the case of legally enforceable debt. Though there was presumption, complainant could not demonstrate legally enforceable dues and hence according to him, learned trial court rightly acquitted the accused.

5. In the light of above submissions, if documents and papers are visited, it is seen that, case was set up that complainant a credit co-operative society extended cash credit loan to the accused to the tune of Rs.3,00,000/- and the same was repaid along with interest. It is specific case that, towards repayment cheque was issued on 21.06.2004, but it was dishonoured and hence the action.

Defence taken in trial court was of total denial, thereby denying issuance of disputed cheque and signature over it. According to him, there is irregularity in the loan transaction and no amount is recoverable.

6. In cases of such nature, transaction has to be first established and secondly existence of dues to the extent of amount reflected on the cheque has also to be established. *Prima facie*, on going through the cross of complainant and document (Exh.51), complainant does not seem to have maintained proper statement of dues paid. Therefore, the moot question arises that when exact dues at the end of accused not being proved, crucial aspect of legally enforceable debt crops up. Precisely, for said reason, learned trial court has answered point no.1 in negative. Resultantly, even if initial presumption is in favour of complainant,

when dues by way of legally enforceable debt has not being established or proved, findings cannot be faulted with. No case being made on merits so as to grant leave as prayed, I proceed to pass following order : -

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)

Tandale