



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.258 OF 2018

Vibhuti Alloy Steel Traders,
Through its Proprietor,
kashinath S/o. Nabaji Dhakane,
Age : 65 years, Occu. : Business,
R/o. 11, Harsidhi Society, Opp.
Nutan Vidyalaya Harsool Road,
Aurangabad

... **Applicant.**
(Orig. Complainant)

Versus

1. Unimetal Castings Limited,
Plot No. 82 to 85, Parvati Co-op.
Industrial Estate, Sangli Road,
YADRAV - 416 121, Ichalkaranji
Dist. Kolhapur.
Regd. Office : Plot No.6 Sector E,
Parvati Co-op Industrial Estate,
Yadrav, Sangli Road,
Ichalkaranji, Dist. Kolhapur.
2. Anand S/o Madhvrao Deodhar,
Age 40 years, Occu: Busi.
Director & Authorized Signatory
& Managing Director of Unimetal
Castings Limited.
Plot No.82 to 85, Parvati Co-op.
Industrial Estate, Sangli Raod.
YADRAV-416121, Ichalkaranji
Dist: Kolhapur.
R/o. Plot No. 17, Parvati Housing Society,
R.K. Nagar, Onkareshwar road, Sangli road,
Yadrav, Ichalkaranji, Dist. Kolhapur.
3. Ajit S/o Madhvrao Deodhar,
Age 45 years, Occu: Busi. Director of
Unimetal Casting Ltd.
Plot No.82 to 85, Parvati Co-op.
Industrial Estate, Sangli Raod.
YADRAV-416121, Ichalkaranji
Dist: Kolhapur.

R/o. Plot No. 17, Parvati Housing Society,
R.K. Nagar, Onkareshwar road, Sangli road,
Yadav, Ichalkaranji, Dist. Kolhapur.

4. Madhvrao S/o Ishwarnath Deodhar,
Age 65 years, Occu: Busi. Director of
Unimetal Castings Ltd.
Plot No.82 to 85, Parvati Co-op.
Industrial Estate, Sangli Road.
YADRAV-416 121, Ichalkaranji
Dist: Kolhapur.
R/o. Plot No.17, Parvati Housing Society,
R.K. Nagar, Onkareshwar road, Sangli road,
Yadav, Ichalkaranji, Dist. Kolhapur.

... Respondents
(original accused)

...
Mr. Ganesh S. Dahale, Advocate for Applicant.
Mr. A. D. Kasliwal, Advocate for Respondents
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 06 FEBRUARY 2024

PRONOUNCED ON : 12 FEBRUARY 2024

ORDER :

1. Applicant original complainant, who has filed proceedings under section 138 of Negotiable Instruments Act, 1881, is aggrieved by the judgment and order of acquittal passed by learned Judicial Magistrate First Class (Court No. 10), Aurangabad, dated 29.11.2018 in S.C.C. No.688 of 2017, acquitting present respondents from offence punishable under section 138 of NI Act. The complainant is desirous of carrying forward the judgment in appeal, hence the leave.

2. Learned counsel for applicant - original complainant would point out that the complainant had supplied scrap material to the accused respondents. Amount of Rs.11,00,000/- was due. There was ample evidence in the form of invoices, which clearly reflected the legal dues outstanding towards accused. Even agreement has been executed regarding transaction and it was agreed to make the payments towards the material purchase. Accounts as well as lessors maintained by complainant were placed on record. However, learned trial court, on the sole ground that there is mismatch between amount due and cheque amount, has acquitted the accused respondents. There is no proper appreciation of evidence and law and hence he seeks leave.

3. In answer to above, learned counsel for respondents accused submits that, learned trial court has rightly held that legally enforceable debt was not established. He pointed out that in the complaint and evidence, original complainant had merely referred the word huge amount as due. Therefore, he further pointed out that, complainant himself has admitted about receipt of amount by way of RTGS. Specific amount was not established and therefore when it was not established as to how much exact dues were remaining, the cheque amount cannot be said to be legally enforceable debt at the end of accused. Therefore, the learned trial court has rightly rejected the complaint.

4. After considering the submissions advanced as above and on going through the complaint, there are averments about complainant dealing in the business of supply of scrap, whereas accused company to be their customers for buying the scrap. In para 2 of the application, it is averred that, complainant supplied scrap material to accused from time to time and it is merely stated that towards the said supply huge amount is outstanding to the accused. Such material clearly indicates that specific details of quantity of raw material supplied, exact amount due has not apparently being stated in the complaint itself, but only there is averment about various cheques being handed over and out of them, some getting dishonoured. However, by way of demand notice, accused is called upon to pay cheque amount of Rs. 11,00,000/- which is due. Documents (Exh.74, 76, 78 and 80) seem to be pertaining to the quantity of the material supplied and complainant seems to have admitted that there are invoices of Rs.11,92,790/- and complainant has admitted receipt of Rs.2,00,000/- on 13.12.2016 as well as amount of Rs.30,000/- on 07.01.2017. Cross of complainant further goes to show that there are admissions about further amounts being received.

5. Therefore, when exact dues of outstanding is not brought on record and there are admissions about time to time

receiving part payments, it is not specifically shown that the amount over cheque in question was legally due, hence there being mismatch between actual dues and cheque amount, the very aspect of legally enforceable debt at the time of issuance of cheque comes under shadow of doubt.

6. No error has been committed by learned trial Judge in acquitting the accused. At the cost of repetition, very complaint carries averments which are about huge outstanding dues, which is omnibus statement.

7. Resultantly, when no legally enforceable debt is established, complaint does not make out offence. Hence, there being no merits in the leave application, the same deserves to be refused.

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)