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Crl.A.No.1096 of 2



IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 02.09.2024

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

Criminal Appeal No. 1096 of 2024

Dhanlaxmi Bank Limited
(Erstwhile Dhanalakshmi Bank Ltd.,)
Rep.by its Chief Manager, Regional Office,
G.Bhanu Murthy,
Om Shakthi Towers,
No.163, Anna Salai,
Chennai - 600 002.

.. Appellant

Versus

1. M/s. Gemini Industries and Images Private Limited,
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai - 600 078.
2. Mr.A.Manohar Prasad,
Director,
M/s. Gemini Industries and Images Private Limited,
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai - 600 078.
3. Mr.P.Kiran,
Director,
M/s.Gemini Industries and Images Private Limited,
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai - 600 078.



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4. Mr.A.Srinivasa Rao,
Director,
M/s. Gemini Industries and Images Private Limited,
No.28, New Bangaru Colony,
West K.K.Nagar, Chennai - 600 078.

.. Respondents

Criminal Appeal filed under Section 378 of the Code of Criminal Procedure, 1973, to set aside the order 14.07.2023 made in C.C.No.2172 of 2014 on the file of the learned III Fast Track Metropolitan Magistrate Court, Saidapet.

For Appellant : Mrs.Chitra Sampath, Senior counsel
for M/s. NVS and Associates
For R2 : Mr.R.Karthikeyan

JUDGMENT

This Criminal Appeal has been filed to set aside the order dated 14.07.2023 made in C.C.No.2172 of 2014 on the file of the learned III Fast Track Metropolitan Magistrate Court, Saidapet.

2. This Court by order dated 13.08.2024, granted leave to file the appeal upon hearing the submission of the learned Senior Counsel. By the



said order dated 13.08.2024, this Court recorded in detail the order passed by the lower court on the cause of action for filing the present petition.

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3. The order dated 13.08.2024 is extracted here under:-

"This petition is filed by the complainant challenging the order passed by the Trial Court on 14.07.2023 dismissing his complaint on technical ground viz., for non-appearance of complainant and hence, the present revision has been filed.

2. The contention of the learned senior counsel for the petitioner/ complainant is that the complainant is a banking company within the meaning of Banking Regulation Act. During the course of its business, the respondents 2 to 4-accused 2 to 4, who are the Directors of the first respondent company approached the petitioner for their financial requirement and offered to deposit the 13% of the 200 number of redeemable non-convertible debenture having face value of Rs.1,00,000/- each totalling Rs.20,00,00,000/- (Rupees Twenty Crores Only). According to the complainant, the debentures are repayable on 26.09.2016 and as per the agreed terms and conditions, the accused are liable to pay interest annually on the principal amount at 13% per annum. The accused paid interest due as on 26.05.2012, but failed to pay interest for the subsequent years and committed default. When the amount was demanded through a notice dated 03.09.2023, the second accused, authorised signatory of the first accused, issued the cheque dated 05.11.2013 for Rs.2,60,00,000/- towards discharge of interest on debt. When the cheque was presented, it was dishonoured for the reason insufficient funds. The complainant therefore issued a notice dated 04.12.2013 and called upon the accused 2 to 4 to pay the cheque amount of Rs.2.60 crores. Even though notice was received, the accused 2 to 4 not responded, hence, the complaint was filed.

3. The learned Senior counsel further submitted that the complaint was filed in the year 2014. During the pendency of complaint, Non-bailable warrant was issued to Accused Nos. 3 and 4 and it was pending. However, the trial court held that when the case was in the stage of serving copies to the accused and when Non-bailable warrants are pending against accused 3 and 4, the complainant is



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expected to take steps and their presence is also necessary. However, there was no representation for the petitioner- complainant and therefore, the complaint was dismissed for non-appearance of the complainant as contemplated under Section 256 read with 204 of the Code of Criminal Procedure.

4. *The learned Senior counsel further submitted that there are four accused in this case. Second accused issued the cheque and A-3 and A-4 are the Directors at the relevant point of time. The trial court issued NBW as against A3 and A4 and it was pending. In such circumstances, on 30.01.2023 the case was adjourned to 06.04.2023. On 06.04.2023, the case was not called, but suddenly it was listed on 08.06.2023 and the absence of the complainant was recorded. Subsequently, an order dated 14.07.2023 was passed as follows:-*

"Complainant absent. No representation. Accused absent. Petition under Section 317 Cr.P.C. allowed. No representation for complaint past several hearings and notice was sent to the complainant in Dis No.447 of 2023 on 28.06.2023. This case is in the sage of copies and NBW pending against A3, A4 and no steps were taken. in such circumstance the appearance of the complainant in this stage is necessary. This court has no other reason to adjourn this case as inspite of notice the complainant did not appear. Hence, this complaint is dismissed under Section 256 r/w 204 cr.P.C. for non-appearance of complaint. Accused is acquitted. "

5. *The learned Senior counsel for the petitioner submitted that on technicalities, the complaint was closed. The trial court did not take note of the fact that NBW was pending against the Accused 3 and 4 and unless the NBW is executed or cancelled, the accused cannot be acquitted in derogation of Section 70 (2) of the Cr.P.C. Further, the notice sent to the complainant on 08.06.2023 was sent to the erstwhile address of the representative of the complainant, who no longer represents the complainant and the complainant is represented by present authorised representative. To this effect, a substitution petition was filed on 10.02.2021 and it was allowed by the trial court on 19.03.2021. Therefore, the learned Senior counsel submits that the trial court ought not to have dismissed the complaint on technicalities instead of affording an opportunity to the complainant to prosecute the complaint on merits.*

6. *Considering the merits of the case, it is seen that the*



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accused in the case are not appearing before the trial court and NBW is pending as against A3 and A4. The accused 2 to 4, who are incharge of the first accused firm issued the cheque in discharge their past loan liability and the cheque was dishonoured on presentation. The petitioner appears before the Trial Court. The case is in the stage of serving copies to the accused and to execute the NBW as against the accused 3 and 4. On 10.02.2021, a substitution petition filed to substitute the representative of the complainant which was allowed on 19.03.2021 by the trial court. However, notice sent to the previous representative name who no longer represents the complainant. The case periodically adjourned for the reason that the complainant was absent and their presence is necessary for recording evidence, which is not correct. The case got adjourned for the purpose of execution of NBW as against A3 and A4, on the following dates 10.02.2021, 19.03.2021, 22.04.2021, 07.04.2022, 27.05.2022, 23.08.2022, 02.11.2022, 31.01.2023 and 06.04.2023. It is stated that on 06.04.2023, the case not listed, but suddenly it was listed on 08.06.2023 and on 14.07.2023 without any notice. On 14.07.2023, no representation recorded for the complainant and the complaint dismissed by the trial court. The complainant is bank and NBW as against the A3 and A4 pending. While so, the trial court dismissing the complaint on technical ground for non-appearance of the complainant is not proper. Admittedly no orders passed on the merits of the case, substantial justice can be rendered only after full-fledged trial and not by short circuiting by dismissing the complaint for technical reasons. He further submitted that the petitioner a Bank, public money is involved which to be recovered, can be done only after full fledged trial.

7. Finding reason and force in the petitioner's submission, this Court is inclined to grant leave. Accordingly, leave is granted.

8. The Registry is directed to number the appeal and post for admission, if it is otherwise in order."

4. In view of the same, since leave has been already granted, there is no necessity to issue notice to the respondents inasmuch as the trial court dismissed the C.C. No. 2172 of 2014 only on technical ground.



Accordingly, notice to the respondents is dispensed with.

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5. It is seen that the complaint was dismissed on technical ground for non-appearance of the appellant and not on merits. Substantial justice can be rendered only after full-fledged trial and not by short circuiting with dismissal of the complaint for non-appearance.

6. In view of the above, the impugned order dated 14.07.2023 passed by the learned III Fast Track Metropolitan Magistrate Court, Saidapet, is set aside and the complaint in C.C.No.2172 of 2014 is restored to the file of learned learned III Fast Track Metropolitan Magistrate Court, Saidapet. Since the case is pending from the year 2014, the trial Court is directed to expedite the trial in C.C.No.2172 of 2014 and dispose the same, on merits in accordance with law as expeditiously as possible. Accordingly, the Criminal Appeal is allowed.

02.09.2024

Index : Yes/No
Speaking Order/Non Speaking Order
Neutral Citation: Yes/No



Internet: Yes/No
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To

1. The learned III Fast Track Metropolitan
Magistrate Court, Saidapet.
2. The Public Prosecutor,
High Court, Madras.



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M.NIRMAL KUMAR, J.

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