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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRR-2887-2013 (O&M)
Date of Decision :24.05.2024

Ravinder Singh ….Petitioner

Versus

Renu Gambhir ….Respondent

CORAM: HON'BLE MR. JUSTICE PANKAJ JAIN

Present:- Mr. Gunjan Kumar, Advocate
for the applicant/petitioner (Through V.C.)

Mr. R.P.S. Arora, Advocate of the respondent.

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PANKAJ JAIN, J. (ORAL)

CRM-40141—142--2013

For the reasons stated in applications, same are allowed subject to all just exceptions. Delay of 6 days in filing the revision is condoned.

CRR-2887-2013

This is a revision petition filed by the complainant-petitioner impugning order dated 23.04.2013 passed by Additional District Judge, Gurgaon, whereby order dated 27.04.2010 passed by Judicial Magistrate First Class, Gurgaon issuing process against the respondent-accused, has been set aside and the complaint filed at the behest of the petitioner against respondent for offence punishable under Sections 138 and 142 of the Negotiable Instruments Act, 1881 (for short '1881 Act') stands dismissed.

2. Petitioner preferred a complaint under Section 138 of 1881 Act against the respondent after cheque bearing No.173420 dated 15.06.2009, drawn on Bank of Punjab Ltd, Branch East Patel Nagar, New Delhi, issued by respondent was dishonoured vide Memo dated 23.07.2009 for 'Funds Insufficient'. It is claimed by the petitioner-complainant that on the assurance given by the respondent-accused the cheque was presented again, yet again the same was dishonoured on 11.08.2009 for 'Funds Insufficient'. Complainant issued statutory notice of demand dated 10.09.2009 calling upon the accused to make cheque payment good within 15 days from the receipt of the notice. The accused failed to respond to the same leading to filing of the present complaint dated 24.10.2009 before Judicial Magistrate First Class, Gurgaon. Judicial Magistrate First Class, Gurgaon vide order dated 27.04.2010 issued process against the respondent summoning her to face trial.

2.1. Respondent-accused preferred revision against the said order before the Sessions Court, Gurgaon. The same stands allowed vide impugned order dated 23.04.2013 holding that the complaint was barred by time as the notice was issued 31st day and not within 30 days from the date of receipt of information from the bank.

3. Counsel for the complainant-petitioner while assailing the order passed by Revisional Court dismissing the complaint submits that the Revisional Court erred in calculating 30 days. Legal Notice was issued at the behest of the complainant-petitioner on 10.09.2009 after receiving

information of dishonouring of cheque on 11.08.2009. He further submits that for the purpose of counting of 30 days the date 11.08.2009 has been excluded. If the intervening time period is calculated after excluding the day on which the complainant-petitioner came to know of dishonouring of cheque, the legal notice was issued well within the prescribed period of 30 days. Reliance is being placed upon ***Saketh India Limited and others vs. India Securities Limited,*** reported as (***1999) 3 SCC 1***.

4. The matter was referred to a Larger Bench which now stands settled in the case of ***Econ Antri Ltd. vs. Rom Industries Ltd. and others, (2014) 11 SCC 769***, wherein the ratio of law laid down in***Saketh India Limited's case (supra)*** stands affirmed. Counsel for the complainant-petitioner thus submits that the Revisional Court erred in dismissing the complaint.

5. *Per contra,* counsel representing the accused-respondent submits that the expression used in Section 138 of the Negotiable Instruments Act is clear and unambiguous. The limitation starts from the time the complainant comes to know about the dishonor of cheque and there is no reason for exclusion of the first day. The notice having been issued to the accused-respondent on 31^{st} day after expiry of 30^{th} day cannot be read as notice and thus cannot be read to constitute cause of action to file complaint against the accused-respondent under Section 138 of the Negotiable Instruments Act. Thus, Revisional Court rightly held that the order issuing process against the accused-respondent was bad as the

complaint was not even maintainable. Thus, the present petition as well as the complaint deserve to be dismissed.

6. I have heard counsels for the parties and have carefully gone through records of the case.

7. Before adverting to the merits of the case, it would be apt to peruse the bare provisions relevant for decision of the controversy in hand. Sections 138 and 142 of 1881 Act read as under:-

> *"xxxx xxxx xxxx*
>
> ***138. Dishonour of cheque for insufficiency, etc., of funds in the account.—****Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to [two] years, or with fine which may extend to twice the amount of the cheque, or with both:*
>
> *Provided that nothing contained in this section shall apply unless—*
>
> *(a) the cheque has been presented to the bank within a period of <u>six months</u>* from the date on which it is drawn or within the period of its validity, whichever is earlier;*
>
> *(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, [within thirty days] of the receipt of information*

by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

Explanation.—For the purposes of this section, "debt or other liability" means a legally enforceable debt or other liability.

***142. Cognizance of offences.**—[(1)] Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),—*

(a) no court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to Section 138:

[Provided that the cognizance of a complaint may be taken by the court after the prescribed period, if the complainant satisfies the court that he had sufficient cause for not making a complaint within such period.]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under Section 138.

[(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction,—

(a) if the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) if the cheque is presented for payment by the payee or holder in due course, otherwise through an account, the

branch of the drawee bank where the drawer maintains the account, is situated.

Explanation.—For the purposes of clause (a), where a cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.]

xxxx xxxx xxxx"

8. Section 9 of General Clauses Act, 1897 reads as under:-

"***9. Commencement and termination of time.—***
(1) In any [Central Act] or Regulation made after the commencement of this Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".
(2) This section applies also to all [Central Acts] made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

9. Proviso appended to Section 138 thus provides as under:-

a) The cheque must have been presented to the bank within a period of its validity which now as per RBI Notification RBI/2011-12/251 dated 04.11.2011 made applicable w.e.f. 01.04.2012 has been reduced to 3 months from 6 months;

b) The payee and holder of the cheque in due course makes a demand for the payment of the cheque amount by giving a notice in writing to the drawer of the cheque within 30 days of receipt of information by him from the bank regarding dishonouring of cheque and;

c) The drawer of such cheque fails to comply with the demand within 15 days of receipt of the said notice.

10. Section 142(1) of 1881 Act further provides that the complaint as contemplated under Section 142(1)(a) be made within one month of the date on which the cause of action under Clause (c) of proviso to Section 138 of 1881 Act arises i.e. within one month of the expiry of 15 days, provided the drawer of the cheque to make payment good on receiving notice from the payee or the holder in due course. I may add here that post Act 55 of 2002 which came w.e.f. 06.02.2003, the Court has been empowered to condone delay in making the complaint beyond prescribed period but after having satisfied with the complainant regarding sufficient cause for not making the complaint within one month.

11. Section 9 of General Clauses Act which is applicable to all Central Acts made after 3rd day of January, 1968 provides that for the purpose of counting commencement and termination of time provided by using the word 'from' and 'to' first in a series of days can be excluded.

12. Apex Court while interpreting the aforesaid provisions in ***Econ Antri Ltd.'s case (supra)***held as under:-

> *"xxxx xxxx xxxx*
>
> *22. In view of the above, it is not possible to hold that the word "of" occurring in Sections 138(c) and 142(b) of the NI Act is to be interpreted differently as against the word "from" occurring in Section 138(a) of the NI Act; and that for the purposes of*

Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on which the cause of action arises should be included for computing the period of 30 days. As held in Fallon, ex p [(1793) 5 TR 283 : 101 ER 159] the words "of", "from" and "after" may, in a given case, mean really the same thing. As stated in Stroud's Judicial Dictionary, Vol. 3, 1953 Edn., Note (5), the word "of" is sometimes equivalent of "after".

23. Reliance placed on Danial Latifi [Danial Latifi v. Union of India, (2001) 7 SCC 740 : (2007) 3 SCC (Cri) 266] is totally misplaced. In that case the Court was concerned with Section 3(1)(a) of the Muslim Women (Protection of Rights on Divorce) Act, 1986. Section 3(1)(a) provides that a divorced woman shall be entitled to a reasonable and fair provision and maintenance to be made and paid to her within the iddat period by her former husband. This provision is entirely different from Section 142(b) of the NI Act, which provides that the complaint is to be made "within one month of the date on which the cause of action arises" (emphasis supplied).

24. We may, at this stage, note that the learned counsel for the appellant relied on State of H.P. [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] where, while considering the question of computation of three months' limitation period and further 30 days within which the challenge to the award is to be filed, as provided in Section 34(3) and proviso thereto of the Arbitration Act, this Court held that having regard to Section 12(1) of the Limitation Act, 1963 and Section 9 of the General Clauses Act, 1897, day from which such period is to be reckoned is to be excluded for calculating limitation. It was pointed out by the counsel for the *respondents that Section 43 of the Arbitration Act makes the Limitation Act, 1963 applicable to the Arbitration Act whereas it is held to be not applicable to the NI Act and, therefore, this judgment would not be applicable to the present case. We have noted that in this case reliance is not merely placed on Section 12(1) of the Limitation Act. Reliance is also placed on Section 9 of the General Clauses Act. However, since, in the instant case we have reached a conclusion on the basis of Section 9 of the General Clauses Act, 1897 and on the basis of a long line of English decisions that where a particular time is given, from a certain date, within which an act is to be done, the day of the date is to be excluded, it is not necessary to discuss whether State of H.P. [State of H.P. v. Himachal Techno Engineers, (2010) 12 SCC 210 : (2010) 4 SCC (Civ) 605] is applicable to this case or not because Section 12(1) of the Limitation Act is relied upon therein.*

25. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the opinion that Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We hold that SIL Import, USA [SIL Import, USA v. Exim Aides Silk Exporters, (1999) 4 SCC 567 : 1999 SCC (Cri) 600] does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to the view taken in Saketh [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : 1999 SCC (Cri) 329] by this Court, which is confirmed *by us, do not lay down the correct law on the question involved in this reference. The reference is answered accordingly."*

13. Thus, it is evident that Larger Bench upheld the view taken in ***Saketh India Limited's case (supra)***. Controversy in ***Saketh India Limited's case (supra)*** and the issue involved were culled out by the Apex Court as under:-

> *"xxxx xxxx xxxx*
> *5. Afore-quoted Section 138 of the Act inter alia provides that where any cheque drawn by a person is returned by the bank unpaid, such person shall be deemed to have committed an offence, however, it will apply, if the conditions mentioned in clauses (a), (b) and (c) are satisfied. Section 142 further provides that the court shall take cognizance of any offence punishable under Section 138 on a written complaint made by the payee or the holder in due course, if such complaint is filed within one month of the date on which the cause of action arises. A month is to be reckoned according to the British calendar as defined in the General Clauses Act, 1897. The question would be, whether for calculating the period of one month which is prescribed under Section 142(b), the period has to be reckoned by excluding the date on which the cause of action arose."*

13.1. Which was answered holding as under:-

> *"6. Similar contention was considered by this Court in the case of Haru Das Gupta v. State of W.B., (1972) 1 SCC 639 wherein it was held that the rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded; the effect of defining the period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. In the context of that case, the Court held that in computing the period of three months from the date of detention, which was 5-2-1971, before the expiration of which the order or decision for confirming the detention order and continuing the detention thereunder had to be made, the*

date of the commencement of detention, namely, February 5th has to be excluded; so done, the order of confirmation dated 5-5-1971 was made before the expiration of the period of three months from the date of detention. The Court held that there is no reason why the aforesaid rule of construction followed consistently and for so long should not be applied. For the aforesaid principle, the Court referred to the principle followed in English courts. The relevant discussion is hereunder:

> *"5. These decisions show that courts have drawn a distinction between a term created within which an act may be done and a time limited for the doing of an act. The rule is well established that where a particular time is given from a certain date within which an act is to be done, the day on that date is to be excluded. (See Goldsmiths' Co. v. West Metropolitan Rly. Co. (1904) 1 KB 1, 5 : 72 LJKB 931). This rule was followed in Cartwright v. MacCormack [(1963) 1 All ER 11, 13 : (1963) 1 WLR 18] : All ER at p. 13, where the expression 'fifteen days from the date of commencement of the policy' in a cover note issued by an insurance company was construed as excluding the first date and the cover note to commence at midnight of that day, and also in Marren v. Dawson Bentley & Co. Ltd. [(1961) 2 QB 135] , a case for compensation for injuries received in the course of employment, where for purposes of computing the period of limitation the date of the accident, being the date of the cause of action, was excluded. (See also Stewart v. Chapman [(1951) 2 KB 792] and North, Re, ex p Hasluck [(1895) 2 QB 264 : 64 LJQB 694]. Thus, as a general rule the effect of defining a period from such a day until such a day within which an act is to be done is to exclude the first day and to include the last day. [See Halsbury's Laws of England, (3rd Edn.), Vol. 37, pp. 92 and 95]. There is no reason why the aforesaid rule of construction followed consistently and for so long should not also be applied here."*

7. The aforesaid principle of excluding the day from which the period is to be reckoned is incorporated in Section 12(1) and (2) of the Limitation Act, 1963. Section 12(1) specifically provides that in computing the period of limitation for any suit, appeal or application, <u>the day from which such period is to be reckoned, shall be excluded. Similar provision is made in</u>

> *sub-section (2) for appeal, revision or review. The same principle is also incorporated in Section 9 of the General Clauses Act, 1897 which, inter alia, provides that in any Central Act made after the commencement of the General Clauses Act, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".*
>
> *8. Hence, there is no reason for not adopting the rule enunciated in the aforesaid case which is consistently followed and which is adopted in the General Clauses Act and the Limitation Act. Ordinarily in computing the time, the rule observed is to exclude the first day and to include the last. Applying the said rule, the period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of 15 days from the date of the receipt of the notice by the drawer expires. The period of 15 days in the present case expired on 14-10-1995. So cause of action for filing complaint would arise from 15-10-1995. That day (15th October) is to be excluded for counting the period of one month. Complaint is filed on 15-11-1995. The result would be that the complaint filed on 15th November is within time.*
>
> *xxxx xxxx xxxx"*

14. Applying the aforesaid principle to the present case, this Court finds that the Revisional Court erred in setting aside the summoning order holding that the notice was issued on 31st day by including the first day which is in teeth to principle enunciated by the Supreme Court in the case of ***Saketh India Limited (supra)***and reiterated by Supreme Court in ***Econ Antri Ltd.'s case (supra)***.

15. Resultantly, the present revision petition is allowed and the impugned order is set aside. The complaint bearing

No.5026/24.10.2009/17.04.2012 as well as summoning order dated 27.04.2010 are hereby restored. Parties are directed to appear before the Trial Court on 06.08.2024.

16. Keeping in view the fact that present complaint was filed in the year 2009, this Court expects that the Trial Court shall conclude the trial expeditiously in accordance with law.

17. Pending application(s), if any, shall also stand disposed off.

(PANKAJ JAIN)
JUDGE

May 24, 2024
ashish/pooja

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