HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH
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CRM-M-37674-2022
Reserved on 02.08.2024
Pronounced on 29.10.2024
****

Amardeep Singh Dahiya ... Petitioner

VS.

DHFCL ... Respondent

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CORAM: HON'BLE MR.JUSTICE SANDEEP MOUDGIL

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Present: Dr. MS Jandiala, Advocate for the petitioner
None for the respondent

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Sandeep Moudgil, J.

(1). The petitioner has approached this Court under Section 482 CrPC seeking quashing of the complaint No.10759 dated 11.10.2017 titled as "Dewan Housing Finance vs. Amardeep Singh Dahiya" pending in the court of JMIC, UT Chandigarh along with all consequential proceedings arising therefrom.

(2). Learned counsel for the petitioner contends that the loan facility was availed by M/s Polo Hotels Ltd. and the petitioner was one of the Managing Directors of the said company and the cheque No.033192 dated 31.07.2017 (Annexure P6) for Rs.54,06,000/- was issued in the name of respondent-financial institution by M/s Polo Hotels Ltd. which has availed the loan facility. It is submitted that the said cheque which was signed by him, was in the capacity as official of the company, a juristic person, which has not been arrayed as party to the complaint and even no notice was issued to the petitioner and the petitioner is not the beneficiary in any manner as an individual. Reliance has been placed on ***Himanshu vs. B.Shivamurthy & Anr. (2019) 3 SCC 797.***

(3). Notice of motion was issued on 24.08.2022, and thereafter, the notice upon the respondent-financial institution was served, however, despite sufficient opportunities granted by this Court, no one has been appearing on its behalf since the notice was served upon the Receipt Clerk of the respondent. Neither the respondent has come forward to file its reply responding to the averments made in the petition. Accordingly, the respondent-financial institution is proceeded against *ex parte* and as such, this Court proceeds to decide this petition on merits.

(4). Heard. Averments made in the petition taken into consideration.

(5). The respondent-complainant is a company engaged in the business of granting various kinds of home loans to the general public. M/s Polo Hotels Ltd. was granted loan and in fulfillment thereof, the cheque No.033192 dated 31.07.2017 (Annexure P6) for Rs.54,06,000/- was issued in the name of respondent-financial institution by M/s Polo Hotels Ltd. which has availed the loan facility. But the said cheque was dishonoured leading to the filing of the complaint in question.

(6). It culls out that the petitioner is an official of M/s Polo Hotels Ltd. which actually availed the loan facility from respondent-complainant. Even the legal notice dated 23.08.2017 was issued in the name of the company M/s Polo Hotels Ltd. and not the petitioner as an individual. The petitioner has appended a copy of the cheque (Annexure P6) which shows that the same was issued by M/s Polo Hotels Ltd. whereas the petitioner has not been impleaded by the respondent in the complaint.

(7). To fasten vicarious liability under Section 141 of the Act on a person, the law is well settled by this Court in a catena of cases that the complainant should specifically show as to how and in what manner the accused was responsible. Simply because a person is a Director of defaulter Company, does not make him liable under the Act. Only the person at the helm of affairs of the Company can be held responsible for the conduct of the business at the time of commission of an offence. I draw support from the views taken by the Apex Court in ***Pooja Ravinder Devidasani v. State of Maharashtra & Ors. AIR 2015 Supreme Court 675***.

(8). In other words, for making a Director of a Company liable for the offences committed by the Company under Section 141 of the Act, there must be specific averments against the Director showing as to how and in what manner the Director was responsible for the conduct of the business of the Company.

(9). In the present case, a perusal of the complaint filed by the respondent (Annexure P5) would reflect that there is no mention therein or even in the legal notice that the petitioner being one of the Managing Directors of the M/s Polo Hotels Ltd. issued the cheque in question. Had it been so, the respondent would have got issued the legal notice in the name of the signatory i.e. the petitioner and not in the name of the company M/s Polo Hotels Ltd.

(10). Accordingly, this petition is allowed and the complaint No.10759 dated 11.10.2017 titled as “Dewan Housing Finance vs. Amardeep Singh Dahiya” pending in the court of JMIC, UT Chandigarh along with all consequential proceedings arising therefrom is hereby quashed.

29.10.2024
V.Vishal

(Sandeep Moudgil)
Judge

1. Whether speaking/reasoned? ***Yes/No***
2. Whether reportable? *Yes/No*