IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

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CRM-M-60803-2024 (O&M)
Date of decision: 12.12.2024

Bliss Agri and Eco Tourism Pvt. Ltd. and others

...Petitioners

Versus

Indiabulls Housing Finance Ltd. ...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. R. S. Rai, Senior Advocate with
Mr. Preetinder Singh Ahluwalia, Advocate,
Mr. Gurmohan Singh Bedi, Advocate,
Mr. Pawandeep Singh, Advocate and
Ms. Ambika Bedi, Advocate
for the petitioners.

MANISHA BATRA, J. *(Oral)*

1. The instant petition has been filed by the petitioners under Section 528 of Bharatiya Nagarik Suraksha Sanhita, 2023 *(which is pari materia with Section 482 of Cr.P.C.)* seeking quashing of Criminal Complaint bearing NACT No. 33331/2022, titled as Indiabulls Housing Finance Ltd. vs. Imagine Residence Pvt. Ltd. and others, filed under Section 138 of the Negotiable Instruments Act, 1881 *(for short 'N. I. Act')* as pending before the Court of learned Judicial Magistrate First Class, Gurugram as well as for quashing all the proceedings having emanated therefrom including order dated 04.11.2022 (Annexure P-2), whereby the petitioners have been ordered to be summoned as accused.

2. As revealed from the record, the aforesaid complaint has been filed by the respondent-company against the petitioners on the allegations that

they had availed loan amounting to Rs. 1,58,00,00,000/- (Rupees one hundred and fifty eight crores) from the respondent by executing an agreement and by agreeing to abide by the repayment schedule. A post dated cheque bearing No. 590910 dated 05.02.2022 for a sum of Rs. 19,15,15,152/- was issued by the petitioners in favour of the respondent with assurance of its being honoured on presentation. Since the said cheque was dishonoured on presentation and as the petitioners failed to pay the amount of cheque even after receipt of statutory notice, therefore, the respondent was compelled to file the aforesaid complaint. The learned Magistrate, after considering the preliminary evidence, passed the impugned order dated 04.11.2022, thereby issuing process against petitioner No. 1-company, petitioner No. 1, who is the Director and authorized signatory of the company as well as petitioner No. 3, who along with petitioner No. 2 is incharge and responsible for the conduct of business of petitioner No 1-company and is looking after its day to day affairs.

3. It is submitted by learned senior counsel for the petitioners that the impugned complaint as well as order dated 04.11.2022, whereby they have been ordered to be summoned to face trial under Section 138 of the N. I. Act are liable to be quashed due to the reason that in fact, no legally enforceable debt existed in favour of the respondent, on the basis of which, it could file the complaint. It is submitted that the loan granted to the petitioners by the respondent had been recalled, vide letter/notice dated 09.03.2020 (Annexure P-5) and on account thereof, there was alteration in the situation of the terms and conditions of the loan, thereby disentitling the respondent to seek repayment of the loan. The respondent had unilaterally invoked ‘Material Adverse Change' Clause without specifying any specific event constituting the

default. It is further argued that by recalling the loan, vide letter dated 09.03.2020, the respondent predicated upon an intention to usurp the secured properties of petitioner No. 1-company. As a consequence of recall of the loan, the schedule of payment was also deemed to be recalled, which had the consequence of rendering the post dated cheques handed over by the petitioners to the respondent at the time of entering into loan agreement as a nullity and those cheques ceased to have effect of financial instruments qua which the respondent could have any legal entitlement.

4. It is further argued by learned senior counsel for the petitioners that post dated cheques including cheque, which is subject matter of the impugned complaint, had been given by petitioner No. 1 on a specific condition as security for paying the installments in accordance with the schedule of repayment and as soon as the loan was recalled, vide letter dated 09.03.2020, the liability of the company to pay installments in accordance with the schedule ceased to exist and no legally enforceable debt remained in existence, which was required to be paid by the petitioners but by concealing and by taking advantage of this fact that the cheque in question was lying with the respondent, it had presented the same for encashment, which had been dishonoured. It is further argued that on account of recalling of the loan, the altered condition was completely attributable to the respondent and this recall has the consequence of the schedule of payment also being recalled and revoked and as such, no such legally enforceable liability of debt or even privity of contract existed between the parties, which was to be discharged by paying the amount of cheque in question or by getting it honoured.

5. The next contention as raised by learned senior counsel for the petitioners is that the petitioner No. 3, even otherwise, could not be fastened with any liability as he was neither a signatory of the cheque in question nor was associated with petitioner No. 1-company on the date of signing of loan agreement between the parties. Rather, he was appointed as 'Non-Executive Professional Director' of the company as on 21.09.2020 and, therefore, he could not be considered to be responsible for day to day affairs of the company and responsible for its acts and omissions. It is, therefore, argued that the impugned complaint as well as impugned order dated 04.11.2022 are liable to be quashed.

6. This Court has heard the arguments of learned senior counsel for the petitioners at considerable length and has also gone through the material placed on record.

7. The petitioners are seeking quashing of a criminal complaint filed by the respondent under Section 138 of the N. I. Act mainly on the ground that the cheque in question, which was a post dated cheque, was issued as a security to the repayment of the loan advanced by respondent No. 1 against the installments, which were due to be payable on 05.02.2022, but on account of the respondent having recalled the loan, vide letter dated 09.03.2020 (Annexure P-5), the repayment schedule was deemed to be recalled/revoked and the liability of the petitioners, which was to accrue on 05.02.2022, ceased to exist on that date. This argument appears to be attractive. However, in the considered opinion of this Court, the same has no legal force and cannot be accepted as such. Undisputedly, the loan granted to the petitioners by the respondent had been recalled vide letter notice dated 09.03.2020. However, on

a perusal of the contents of this notice, it is apparent that the loan granted to the petitioners had been recalled without prejudice to the rights of the respondent to treat the said notice/letter as a notice of/for sale, disposing off, transfer, grant, conveyance, assignment and/or encumbrance of any/all of the security/securities provided in favour of the lender under the loan documents. Since as per the claim of the petitioners themselves, the cheque in question was by way of security and as there is nothing on record to show that the notice dated 09.03.2020 had been challenged by them at any point of time, therefore, it is *prima facie* established that the respondent was very much entitled to treat the notice as a notice for sale, assignment, transfer or disposing off of any/all of the securities provided in its favour, which included the realization of the amount of cheque in question, which being a post dated cheque could obviously be sent for realization only after 05.02.2022. The petitioners, therefore, cannot say that no legally enforceable debt existed as on 05.02.2022 or by issuing of the notice, their liability to repay the loan also ceased to exist. Therefore, this contention is liable to be rejected.

8. It also needs to be mentioned here that the well established proposition of law is that the burden of proving that whether there is any debt or liability or not is to be discharged in the trial as there is legal presumption of a cheque having been issued in the discharge of liability and such presumption must receive due weightage. Reliance in this context can be placed upon the observations made by Hon'ble Supreme Court in ***Rathish Babu Unnikrishnan vs. the State (Govt. of NCT of Delhi) and another : 2022 (2) R.C.R. (Criminal) 871***, wherein while considering the question as to whether a complaint filed under Section 138 of the N. I. Act can be ordered to

be quashed on the basis of the factual defences by an accused at that stage by filing a petition for quashing of such order, it was observed that the burden of proving that there is no existing debt or liability, is to be discharged in the trial as there is a legal presumption of a cheque having been issued in the discharge of liability and such presumption must receive due weightage. It was held that in a situation where an accused moves Court for quashing even before trial has commenced, the approach of the Court should be careful enough to not to prematurely extinguish the case by disregarding the legal presumption which supports the complaint. Reliance can further be placed upon the authority cited as ***M.M.T.C. Ltd. and another vs. Medchl Chemicals and Pharma (P) Ltd. and another : (2002) 1 SCC 234***, wherein it was observed by Hon'ble Supreme Court that there is no requirement that the complainant must specifically allege in the complaint that there was a subsisting liability. The burden of proving that there was no existing debt or liability, was on the respondents and they have to discharge the same in the trial. Merely on the basis of the averments in the petition filed by the accused for quashing the complaint, the High Court could not conclude it that there was no existing debt or liability.

9. So far as the contention that petitioner No. 3 could not have been summoned as he was neither the signatory of the cheque in dispute nor was responsible for day to day affairs of petitioner No.1-company as he was a 'Non-Executive Professional Director' is concerned, the petitioners have relied upon document (Annexure P-8), which is copy of Form No. DIR-12, shown to be submitted under the provisions of Companies Act by the petitioner No.1-company. In this Form, the designation of petitioner No. 3 is

shown as ‘Director’ in the category of professional. He is also shown to be the Chairman as well as ‘Executive Director’, whereas there is cross mark under the category of ‘Non-Executive Director’. From this document, no inference whatsoever can be drawn at this stage to the effect that respondent No. 3 was not responsible for day to day affairs of petitioner No.1-company. As such, this contention also does not deserve to be accepted, at this stage.

10. While concluding, this Court also considers it appropriate to say that the disputes questions of facts are involved in this case, which need to be adjudicated only after the parties adduce evidence. While considering the question as to whether the High Court should take recourse to quashing complaints in such like cases was considered by Hon’ble Supreme Court in ***Rajeshbhai Muljibhai Patel vs. State of Gujarat : (2020) 3 SCC 794***, wherein it was observed that the complaint under Section 138 of the N. I. Act ought not to be quashed by the High Court by taking recourse to Section 482 of Cr.P.C. On a perusal of the material placed on record as well as the order passed by the learned Magistrate on 09.01.2023, it has been noticed that the same had been passed after considering the evidence available on record in the form of preliminary evidence as adduced by the respondent/complainant. The learned Magistrate was not required to go into the details of the allegations as levelled in the complaint or to carry some detailed enquiry at that stage. The view taken by the learned Magistrate is a possible view that the cheque in question was drawn in discharge of a legally enforceable debt. As such, in the presence of such legal presumption also, it is not judicious to quash the complaint and summoning order passed by the learned Magistrate by going into the details of the allegations as levelled by the petitioners or by carrying a

detailed enquiry without giving opportunity to the trial Court to evaluate the evidence of the parties firstly. The powers to quash the criminal proceedings at any stage undisputedly exist with this Court, however, it is not expected to embark upon an enquiry as to the reliability or genuineness or otherwise of the allegations levelled in the complaint by invoking the extraordinary/inherent powers of this Court and that too at the pre-trial stage since quashing of proceedings at this stage would obviously result in final adjudication of dispute between the parties without giving them opportunity to adduce evidence. Such powers are to be exercised with great circumspection and sparingly and also in rarest of rare cases. More particularly, when there is a legal presumption that when a cheque is issued and the signatures over the same are not disputed by the petitioners. The balance of convenience is in favour of the respondent, though obviously, the petitioners would certainly be given opportunity to rebut that presumption.

11. Consequent to discussion as made above, this Court has no hesitation to hold that the complaint, filed by the respondent, and the proceedings initiated in the form of passing the impugned summoning order by the learned Magistrate do not warrant any interference at this stage when the factual controversy between the parties is yet to be canvassed and considered by the learned trial Court. Accordingly, finding no reason to allow the petition, the same is dismissed.

12.12.2024 **(MANISHA BATRA)**
Waseem Ansari **JUDGE**

Whether speaking/reasoned *Yes*
Whether reportable *Yes*