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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 829/2023

ABDUL MAJID ..... Petitioner

Through: Mr. Z.A. Siddiqui, Ms. Nidhi Banga, Ms. Anisha Upadhyay and Mr. Akash Kumar, Advocates.

versus

PANKAJ ARORA & ANR. ..... Respondents

Through: Mr. Rohit Singh, Advocate for respondent No.1.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **22.05.2024**

1. By way of present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of the order dated 20.09.2022 passed by learned MM, Dwarka Courts, New Delhi in complaint case Ct. No. 5006295/2016 instituted under Sections 138/142 NI Act, 1881.

2. Facts relevant for consideration of the present matter are that respondent No.1/complainant filed the subject complaint stating therein that he had advanced a sum of Rs.30,50,000/- to the petitioner/accused as friendly loan at which time a pronote dated 15.03.2014 was also executed in his favour. He further stated that the petitioner paid an amount of Rs.3,50,000/- in partial discharge of his liability, and subsequently, issued two cheques (*'subject cheques'*) for the balance amount of Rs.27,00,000/-. The subject cheques, when presented for encashment, were dishonoured with the remarks 'funds insufficient' and 'drawer signature differs'. A

demand notice dated 10.10.2016 was issued by respondent No.1, however, upon petitioner's failure to repay the amount under the subject cheques, the subject complaint case came to be registered.

3. During the course of proceedings, an application under Section 145(2) NI Act came to be filed by the petitioner seeking permission to examine the witnesses of the complainant/respondent No.1. Reply to the aforesaid application was filed by respondent No.1 and upon consideration of the entire material placed before it, learned MM dismissed the said application vide the impugned order.

In the impugned order, the learned MM observed that the matter was at the stage of final arguments and that ample opportunities had been granted to both the parties to address their submission. It was further observed that the petitioner had earlier filed an application under Section 311 Cr.P.C. seeking the same relief, which came to be dismissed by the predecessor and that the revision petition filed against the aforesaid dismissal also came to be dismissed. Thus, it was held that the present application under Section 145(2) seeking the same relief was an abuse of the process of law and reference was also made to the decision of this Court in Rajesh Aggarwal *v.* State & Anr. reported as **171 (2010) DLT 51**.

4. Learned counsel for the petitioner contends that the impugned order is erroneous and has been passed without due application of judicial mind. He states that the petitioner seeks to examine the witnesses of the complainant in order to prove his case and that failure to grant him an opportunity to examine them would lead to a failure of justice and run contrary to the ideals of fair trial.

5. Learned counsel for respondent No.1, on the other hand, has resisted the present petition and has defended the impugned order by contending that the same has been passed after due consideration of the facts and circumstances of the case. He has drawn attention of this Court to the Supreme Court decision in Indian Bank Association & Ors. *v.* Union of India & Ors. reported as **(2014) 5 SCC 590**.

6. I have heard learned counsels for the parties and have also perused the material placed on record.

7. The present matter arises out of a complaint filed in the year 2016, wherein notice under Section 251 Cr.P.C. was framed against the petitioner on 22.07.2017 wherein the petitioner pleaded not guilty and claimed trial and his defence also came to be recorded. After recording the same, the learned MM observed that while the petitioner had pleaded not guilty and claimed trial, however, in the very next question, he had admitted his liability towards the complainant. Consequently, it was opined that the petitioner had no defence to make and complainant's evidence and SA was dispensed with and the matter was put up for defence evidence.

An application under Section 311 Cr.P.C. came to be filed by the petitioner seeking recall of complainant witness (i.e. the complainant himself) for cross-examination. However, the said application came to be dismissed by the learned MM vide order 23.11.2017, while observing that the petitioner had admitted the substance of the complainant's version and further that allowing the same would amount to reviewing of the order dated 22.07.2017, which is impermissible in view of Section 362 Cr.P.C. The revision filed against the aforesaid order also came to be dismissed vide order dated 15.02.2018 while recording that the view of the learned MM was correct and further that revision against order passed w.r.t an application under Section 311 Cr.P.C. was barred. The said order of revision was not challenged further and instead the subject application under Section 145(2) came to be filed.

8. A perusal of the application under Section 145(2), copy of which has been placed on record, would show that the same has been filed seeking the same relief as was sought by the petitioner by way of his application under Section 311 Cr.P.C. i.e. recalling of the complainant's witness (i.e. the complainant himself) to examine him in order to prove the case put forth by the petitioner.

In the considered opinion of this Court, the view taken by the learned MM in the impugned order is correct. The petitioner had been granted ample opportunity to lead evidence in support of his submission and further, despite having opportunity to challenge the orders dated 22.07.2017 and 15.02.2018, the petitioner did not challenge the aforesaid orders and instead filed the subject application that too with a long delay, on 31.05.2022, seeking a relief/permission that had already been duly considered and decided on two occasions previously. Further, as already noted above, the matter is statedly at the fag end as the same is fixed for final arguments before the learned MM.

9. Positive reference, in this regard, may also be drawn to the Supreme Court decision in Indian Bank Association (Supra), wherein it was observed:-

> *"23.4. The court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 CrPC to enable him to enter his plea of defence and fix the case for defence evidence,*

unless an application is made by the accused under Section 145(2) for recalling a witness for cross examination.

23.5. The court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The court has option of accepting affidavits of the witnesses instead of examining them in the court. The witnesses to the complaint and the accused must be available for cross-examination as and when there is direction to this effect by the court.

24. We, therefore, direct all the criminal courts in the country dealing with Section 138 cases to follow the abovementioned procedures for speedy and expeditious disposal of cases falling under Section 138 of the Negotiable Instruments Act. The writ petition is, accordingly, disposed of, as above."

A perusal of the extract above would show that once the accused appears, the Court should ask him to take the notice under Section 251 Cr.P.C. and should fix the case for defence evidence, unless the accused makes an application under Section 145(2) seeking recall of witness for cross-examination. What this essentially entails is that the accused should make the aforesaid application at the earliest and preferably before the defence evidence starts. Delay in the aforesaid can be fatal inasmuch as matters under Section 138 NI Act need to be disposed of expeditiously.

10. Keeping in view the facts as discussed above as well as the legal position enumerated above, this Court finds no ground to interfere with the impugned order. The petition is dismissed and disposed of accordingly.

MANOJ KUMAR OHRI, J

MAY 22, 2024/NI