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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of order: 21st November, 2024**
+ CRL.M.C. 5767/2023 & CRL.M.A. 21698/2023
H. S. OBEROI BUILDTECH PVT. LTD AND ORS.Petitioners

Through: Mr. Pawan Kumar Mittal, Advocate
versus

M/S MSN WOODTECHRespondent
Through: Mr. Lal Singh Thakur, Mr. Sudhir
Tewatia, Mr. Prashant Solanki, Ms.
Muskan gola and Mr. Ankush Saini,
Advocates

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant petition under Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (hereinafter “BNSS”) [earlier Section 482 of the Code of Criminal Procedure, 1973 (hereinafter “CrPC”)] has been filed on behalf of the petitioners seeking the following reliefs:

“a) Set-aside/quash the order dated 28.10.2020 passed by the Ld. Metropolitan Magistrate concerned on the file CC No. 397/2020 titled as MSN Woodtech Versus H S Oberoi Buildtech Pvt Ltd & Others and quash the said complaint case and all proceedings emanating therefrom.

b) Grant such other and further relief, as may be found just and proper under the circumstances of the case by this Hon’ble Court along with the costs to the petitioner(s).”

Signature Not Verified

Digitally Signed By: PRAVEEN
KUMAR BABBAR
Signing Date: 30.11.2024
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2. The respondent filed a complaint case bearing CC NO. 397/2020 under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter “NI ACT”), thereby, alleging that the petitioners issued a cheque for a sum of Rs. 13,61,402/- in discharge of a legally enforceable liability. The cheque was presented for encashment but was dishonoured with the remarks ‘payment stopped by drawer’.
3. The learned Trial Court, vide order dated 28th October, 2020, passed the summoning order, whereby, the petitioners were summoned for the offence under section 138 of the NI Act.
4. Being aggrieved by the same, the petitioners have filed the instant petition seeking quashing of the impugned order dated 28th October, 2020 as well as quashing of the aforesaid complaint case filed by the respondent under the NI Act.
5. Learned counsel appearing on behalf of the petitioners submitted that the impugned order is bad in law and liable to be set aside as the same has been passed without taking into consideration the entire facts and circumstances.
6. It is submitted that the learned Trial Court has failed to take into account that the complaint has been filed after the expiry of the limitation period of one month as envisaged under Section 142 (1) of the NI Act.
7. It is submitted that the learned Trial Court took the cognizance of the case in a mechanical manner and without considering the fact that the complaint is barred by the limitation. It is further submitted that neither there



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was any application for condonation of delay explaining the reasons for delay, nor any such prayer was made before the Court concerned.

8. It is submitted that the learned Trial Court has failed to appreciate that even if the allegations and assertions made by the respondent in the complaint case are taken as correct, then also no liability can be fastened on the petitioners for the reason that there is nothing on record in terms of Section 141 of the NI Act that can hold the petitioners liable under Section 138 of the NI Act.

9. It is submitted that the learned Trial Court has taken cognizance against 'accused persons' and has not applied judicial mind to the situation at hand. Further, the mandate of law clearly states that at the stage of cognizance, a magistrate ought to apply its mind to the evidence before it and further should only proceed ahead after adjudicating the alleged role, if any, of the portrayed accused and if no role/involvement is found, the magistrate is duty bound to drop the process against the said accused.

10. It is submitted that there is no material on record to show that the petitioner no.2 was the Chairman and Managing Director (hereinafter "CMD") of the petitioner no.1 company. It is further submitted that except a bald assertion that the petitioner no.2 is the CMD, there is no averment or material to show that the petitioner no.2 had any role in the alleged day to day affairs of the petitioner no. 1 company.

11. Therefore, in view of the foregoing submissions, it is prayed that the instant petition may be allowed and the reliefs be granted as prayed for.



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12. *Per Contra*, the learned counsel appearing on behalf of the respondent vehemently opposed the instant petition submitting to the effect that the same is liable to be dismissed being devoid of any merits. It is submitted that the impugned order has been passed in accordance with the law and there is no illegality of any kind thereto. The instant petition is nothing but a gross misuse of the process of law. Therefore, it is prayed that the instant petition may be dismissed.

13. Heard the learned counsel appearing on behalf of the parties and perused the material on record.

14. By way of the present petition, the petitioners have challenged the impugned summoning order and are seeking quashing of the complaint case filed by the respondent.

15. As per the settled principles of law, summons in a complaint case instituted under the NI Act are issued when a *prima facie* a case is made out on the basis of documents (evidence by way of affidavit) along with the complaint and its content. While issuing summons, the Court concerned has to carefully examine the material available on record and it must be ensured that there is enough preliminary evidence to proceed without delving deeply into the disputed factual questions at the summoning stage. The same has also been held in a catena of judgments passed by the Hon'ble Supreme Court as well as by various High Courts.

16. In the instant case, the primary contention of the petitioners is that the complaint case is barred by limitation and hence, the learned Trial Court



erred in considering the same when the complaint was not even accompanied by any application for condonation of delay.

17. In ***Econ Antri Ltd. v. Rom Industries Ltd.***, (2014) 11 SCC 769, the Hon'ble Supreme Court, while deciding the issue of calculation of limitation period with regard to proviso (c) to Section 138 and Section 142(b) of the NI Act, followed one of its earlier judgments passed in ***Saketh India Ltd. v. India Securities Ltd.***, (1999) 3 SCC 1 and held as under:

“42. 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 India Ltd. v. India Securities Ltd. [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : AIR 1999 SC 1090] 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 v. Exim Aides Silk Exporters [SIL Import v. Exim Aides Silk Exporters, (1999) 4 SCC 567]) 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. [Saketh India Ltd. v. India Securities Ltd., (1999) 3 SCC 1 : AIR 1999 SC 1090]) 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.”

18. In terms of the judgment of the Hon'ble Supreme Court, Sections 138(c) and 142(b) of the NI Act, the Court concerned shall take cognizance of any offence punishable under Section 138 of the NI Act on a written complaint made by the payee or the holder in due course, if such complaint



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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 Clause Act, 1897. Thus, 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.

19. This Court has meticulously perused the impugned summoning order as well as the copy of the complaint along with the evidence by way of affidavit.

20. In the instant case, the memo of dishonor of cheque is of 17th October, 2019 and the legal demand notice was issued on 15th November, 2019 which is within the prescribed limitation period. Thus, there is no dispute regarding the same.

21. Further, 15 days' after the issuance of notice expired on 1st December, 2019. Therefore, in terms of the provisions and the settled position of law, excluding 2nd December, 2019, 30 days' period started from 3rd December, 2019 and the limitation period for filing the complaint expired on 2nd January, 2020.

22. The petitioners contend that since the complaint was filed on 10th January, 2020 in terms of the endorsement order dated 10th January, 2020 passed by the learned CMM, therefore, the complaint was filed beyond the limitation period and the learned MM erroneously passed the summoning order without taking into consideration that the limitation period to file the



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same had been expired and the said complaint was not accompanied by any application seeking condonation of delay.

23. As per the Delhi High Court calendar of the year 2020; 2nd January, 2020; 3rd January, 2020; 4th January, 2020 and 5th January, 2020 were holidays. Therefore, in terms of the settled law, the next working day following the holiday would be taken as last day for calculation of limitation period, i.e., 6th January, 2020.

24. The copy of evidence by way of affidavit shows that the same was verified on 6th January, 2020, therefore, if 6th January, 2020 is taken as the date of filing then evidently the complaint has been filed within the limitation period.

25. However, if taking 10th January, 2020 as the date of filing of the complaint, in that event, it is noted that there is a mere delay of 4 days in filing the complaint.

26. The general principle underlying the condonation of delay is that Courts have discretionary power to extend the time limit in cases where the delay was due to genuine and valid reasons, however, the Courts must examine each case on its merits and consider factors such as the explanation for the delay, the sufficiency of the cause shown, the absence of negligence, and the potential prejudice caused to the other party.

27. The only power under the NI Act to condone delay is provided under Section 142(b) of the NI Act, whereby, it is provided that a complaint case is required to be filed before the learned Magistrate within one month after



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completion of 15 days, i.e., time limit as provided under Section 138 of the NI Act.

28. However, if for some reasons the complaint could not be filed within one month, the learned Magistrate is empowered to condone delay on sufficient grounds.

29. Under the circumstances, whenever the legislature has intended to condone the delay, same is provided and no such condonation of delay is provided in Section 138 of the NI Act but the same is provided in Section 142(b) of the NI Act. Power to condone delay as provided under Section 142 of the NI Act is to be read and considered only with regard to delay in filing the complaint within period of one month and it cannot be extended to condone delay with regard to other lapses more particularly delay in issuing notice as contemplated under Section 138(b) of the NI Act.

30. Adverting to the issue in hand, as noted above, if the date of filing the complaint is taken to be 10th January, 2020, then in such an event, it is clear that there is a delay of 3 days. However, while issuing summons, the learned Trial Court held that the present complaint has been filed within the limitation period.

31. With regard to the same, this Court is of the view that there is nothing on record to show that the petitioners herein had raised their grievance with regard to the limitation. Moreover, even if there is a delay, the Trial Court is well within its power to condone the delay and in terms of Section 142(b) of the NI Act, filing of an application for condonation of delay is not a statutory mandate, rather, the said provision merely states that cognizance of a



complaint may be taken by the Court concerned even after the complaint has been filed after the expiry of the limitation period if the complainant satisfies the Court concerned for not making the complaint within the prescribed time.

32. Therefore, this Court, under Section 482 of the CrPC (now Section 528 of the BNSS) does not find any illegality in the impugned order considering the fact that there is a mere delay of 3 days in filing the complaint. Further, the merits of a case cannot be diluted by contending the ground of 3 days delay in filing the complaint.

33. However, it is pertinent to state here that the petitioners are always at liberty to press the issue of limitation before the Court concerned at the appropriate stage, if any.

34. Here, it is imperative to note that the impugned order was passed in the year 2020 and the instant petition challenging the said order was filed in the year 2023, i.e., after a lapse of almost three years. The same reveals that the petitioners themselves remained silent in asserting their rights and woke up from slumber after an inordinate delay. The law states that the litigants must be cautious and vigilant in asserting their rights and no litigant can be allowed to challenge any order at any given time, unless barred by some genuine reasons.

35. It is observed by this Court that delay in challenging the impugned order has ultimately led to unnecessary pendency of the case before the learned Trial Court and the same tantamount to gross misuse of the process of law. When the petitioners are well within their rights to address/raise their



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grievances before the Court concerned, then filing the instant petition at such a belated stage is a futile exercise and waste of judicial time.

36. At this juncture, it is pertinent to mention that the petitioners have argued that the petitioner no. 2 has been wrongly issued summons against him as he was not responsible for the day to day affairs of the petitioner company and thus, he cannot be held liable to be prosecuted under Section 138 of the NI Act. With regard to the same, this Court is of the view that as per the copy of the complaint placed on record, the respondent has specifically pleaded that the petitioner no. 2 herein was responsible for the day to day affairs of the company and he along with the other accused had approached the complainant through a purchase order for supply of some products. Therefore, for the purpose of issuing summons, this Court is of the view that *prima facie* case is made out and the argument advanced by the petitioners cannot be entertained at this stage, and he will be at liberty to press the said issue at the appropriate stage before the Court concerned. Furthermore, the entire complaint cannot be quashed merely on the said ground, at this stage.

37. Coming to the issue of not providing sufficient reasons for summoning the petitioners, it is observed that the respondent had filed the evidence by way of an affidavit. It is pertinent to note that as per Section 145 of the NI Act, the complainant may give its evidence *via* an affidavit and upon satisfaction of the Court concerned, the same may be treated as an evidence for summoning the accused for any enquiry, trial or proceedings.



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Therefore, it is held that the learned Trial Court passed the impugned order in accordance with the law and there is no illegality of any kind thereto.

38. Keeping in view the aforesaid facts and circumstances, this Court is not inclined to exercise its powers under Section 482 of the CrPC (now Section 528 of the BNSS) to quash the impugned order and the complaint case. In light of the same, the impugned order dated 28th October, 2020, passed by the learned MM (NI Act – 03), West, Tis Hazari, Delhi in CC No. 397/2020, is, hereby, upheld.

39. Accordingly, the instant petition, being devoid of any merits, is dismissed along with the pending applications, if any.

40. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

NOVEMBER 21, 2024
gs/ryp/av

Click here to check corrigendum, if any