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

\+ **CRL.M.C. 4318/2022 & CRL.M.A. 17696/2022**

SH VED PRAKASH YADAV .....Petitioner

Through: Mr. M.A. Niyazi, Ms. Kirti Bhardwaj, Ms. Nehmat Sethi and Mr. Arquam Ali, Advocates.

versus

UCO BANK .....Respondent

Through: Mr. Rajesh Rattan, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

O R D E R

% **13.12.2024**

1. The present petition is filed against the order dated 20.04.2022 (hereafter '**impugned order**') passed by the learned Metropolitan Magistrate ('**MM**'), Patiala House Court, New Delhi in CC NI Act 6843/2021 titled *UCO Bank v. Ved Prakash Yadav.*

2. By the impugned order, the learned MM took cognizance of the offence under Section 138 of the Negotiable Instruments Act, 1881 ('**NI Act**') and issued summons to the petitioner. The petitioner additionally seeks quashing of the proceedings emanating from CC NI Act 6843/2021.

3. The brief facts relevant for the purpose of the present petition are that the petitioner availed a property loan dated 28.05.2015 for a sum of ₹1,15,00,000/- repayable with interest @11.95% per annum with monthly interest in 144 equal installments. The said loan was availed by mortgaging immovable property Plot No. 21&22, measuring 2653.5 ft

situated at Humayunpur, Krishna Nagar, South Delhi.

4. Thereafter, in the year 2021, the petitioner missed a few installments payable *qua* the aforesaid loan due to which the petitioner received an overdue notice dated 04.05.2021 informing that the loan sanctioned had been irregular.

5. Subsequently, on 31.05.2021, a recall notice was issued by the respondent recording that the accounts have turned NPA with effect from 22.05.2021, and calling upon the petitioner to pay the bank dues in full aggregating to ₹96,90,000/-.

6. It is the petitioner's case that at the insistence of the respondent, the petitioner had signed and issued blank, undated, security cheques to the respondent on 28.05.2015. It is further the case of the petitioner that the respondent misused the cheque no. 204792 thereby filling the amount as ₹94,51,714/- dated 06.10.2021, and presenting it without any intimation to the petitioner which got dishonoured with remarks "*Insufficient Funds'*. Pursuant to the dishonour of the subject cheque, and subsequent non-payment of the amount despite the receipt of statutory notice, the respondent filed the subject complaint.

7. Subsequently, the petitioner property was visited by some officers of the respondent in order to take physical possession of the property for non-payment of the loan. The same act was challenged by the petitioner by filing an S.A. No. 137/2021 before the DRT-II, Delhi. The matter could not be taken up due to non-availability of the presiding officers, and the matter was listed for February, 2022.

8. In the interregnum, the petitioner filed a petition before this Court being CM(M) 1148/2021 seeking to restrain the respondent from dispossessing the petitioner from the property Plot No. 21&22, measuring 2653.5 ft situated at Humayunpur,

Krishna Nagar, South Delhi. This Court *vide* order dated 13.12.2021 directed the petitioner to pay certain amounts to the respondent as a condition to imposing a stay of the possession notice. The DRT *vide* order dated 15.02.2022 disposed of the SA filed by the petitioner and noted that the petitioner had already complied with the direction passed by this Court, and paid the amounts as directed to the respondent. It was noted that the account of the petitioner had been regularized.

9. An O.A. No. 541/2021 had also been filed by the respondent on 30.09.2021 prior to the complaint case filed under Section 138 of the NI Act. The DRT-II *vide* order dated 09.06.2022 disposed of the OA in view of the settlement between the parties.

10. The learned counsel for the petitioner submits that the petitioner has already settled with the bank and paid the overdue amount. He submits that the petitioner *vide* order dated 13.12.2021 passed by this Court at the time when the DRT was not functioning, was afforded some time to clear the dues owed to the respondent.

11. He submits that in compliance with the said order, the petitioner has already paid the amount to the respondent. He submits that the DRT-II *vide* order dated 09.06.2022, taking note of the settlement between the parties, disposed of the O.A. No. 541/2021 filed by the respondent.

12. He submits that CC NI Act 6843/2021 was filed prior to settlement arrived at between the parties. He submits that in light of the subsequent payments being made to the respondent, and the settlement between the parties, the complaint case filed under Section 138 of the NI Act does not survive since the petitioner is no longer liable for the amount as mentioned in the subject

cheque.

13. The learned counsel for the respondent opposes the quashing of the impugned order and the proceedings arising out CC NI Act 6843/2021. He submits that soon after the regularization of the bank account, the petitioner filed a civil suit against the bank officials seeking damages.

14. He submits that the subject cheque was issued for the payment of the entire loan amount, and some money is still payable by the petitioner. He submits that the petitioner, in compliance of the order passed by the DRT-II dated 09.06.2022 has only cleared the outstanding dues. He consequently submits that the proceedings emanating from CC NI Act 6843/2021 be not be quashed.

15. I have heard the counsels and perused the record.

16. Undisputedly, in addition to filing the subject complaint under Section 138 of the NI Act, the respondent had also initiated proceedings before the DRT being O.A. No. 541/2021. The DRT-II *vide* order dated 09.06.2022 took note of the fact that the matter had already been settled between the parties, and the account of the petitioner had been regularised. Consequently, in view of the settlement and restructuring of the loan, O.A. No. 541/2021 was disposed of.

17. Once the account had been regularized by the respondent themselves consequent to the payment of certain amounts owed to the respondent, the petitioner was no longer liable to the amount mentioned in the cheque.

18. For the commission of an offence under Section 138 of the NI Act, the cheque that is dishonoured should represent a legally enforceable debt. Considering that some amount already stands paid, admittedly, the amount in cheque was not in discharge of a

legally enforceable debt. It is not the case of the respondent that the payments were not accepted by the bank. In fact, pursuant to the payments made by the petitioner, the account of the petitioner was regularized, and the O.A. No. 541/2021 was also disposed of.

19. The liability of the petitioner, if any, at subsequent stage, due to amounts not paid in future, is not equal to the amount of cheque. The cheque paid earlier for dues, at that stage, cannot be said to represent the legally enforceable debt under the NI Act when concededly the earlier dues no longer survive after the account being regularized on payment of money. The cheque paid earlier in discharge of debt will not represent the amount payable, if any, at subsequent stage. The Respondent Bank on its own accepted the money and regularized the account of the petitioner and also withdrew the proceedings for recovery of the said amount. The Bank having withdrawn the recovery suit on account of settlement cannot be allowed to indirectly pursue the parallel proceedings in the form of complaint under Section 138 of the NI Act.

20. The learned counsel for the respondent has expressed a grievance stating that the petitioner, consequent to the regularization of the account, has filed a civil suit against the bank officials. The same however is not the subject matter of the present petition.

21. In respect of the said grievance and for recovery of any dues, the respondent is at liberty to initiate appropriate proceedings before the concerned authority.

22. In view of the above, the present petition is allowed, and the impugned order, and the proceedings emanating from CC NI Act 6843/2021 are quashed.

23. Pending application also stands disposed of.

AMIT MAHAJAN, J

DECEMBER 13, 2024
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