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

+ **CRL.M.C. 6126/2024, CRL.M.A. 23422/2024 (stay)**

M/S DOLPHIN ENTERPRISES

.....Petitioner

Through: Mr. Anand Sharma, Ms. Manju Gaur
and Mr. Raghavendra Kumar,
Advocates.

versus

HERO FINCORP LTD.

.....Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

08.08.2024

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CRL.M.A.23423/2024 (Exemption)

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The Petition under Section 482 of the Code of Criminal Procedure, 1973, has been filed on behalf of the petitioner for setting aside the Order dated 03.07.2024, passed by the Court of learned JMFC (NI Act), Digital Court-03, (South), Saket Courts, New Delhi-02, in CC No. 261/2021 *vide* which the application under Section 45 read with Section 73 of the Indian Evidence Act, 1872, has been dismissed.
4. Briefly stated, the respondent No. 2 had filed a complaint under Section 138 of the N.I. Act in regard to the dishonour of the cheques signed by the petitioner, on account of insufficiency of funds. According to the applicant, the cheques had their genesis in the sanction letter and facility



Agreement dated 27.11.2019 wherein accused Partha Sarthi Ghosh and Smt. Mrs. Alokanda Ghosh, had availed credit facility from the complainant. Mrs. Alokanda Ghosh was shown as a co-borrower and the two documents were claimed to have been signed by both the parties. In the Legal Notice dated 07.12.2020, served upon the accused, as well, the name of Mrs. Alokanda Ghosh, was mentioned. On receipt of Notice, she came to know that her signatures have been forged on the aforesaid documents and she made a police complaint for the registration of FIR, in this regard.

5. Mrs. Alokanda Ghosh has also been examined by the revisionist as DW-1, who has categorically denied her signatures on Ex.CW1/3 and CW1/4, in her testimony.

6. The revisionist thereafter, filed the Application under Section 45 read with Section 73 of the Indian Evidence Act, for sending the disputed and the admitted signatures to the Hand Writing Expert for the Report to be called, but Application was dismissed *vide* impugned Order dated 03.07.2024.

7. Learned counsel for the petitioner submits that the petitioner in order to establish his defence of the signatures of co-borrower being forged on the documents, he had sought the examination of Hand Writing Expert, to disprove the signatures of Mrs. Alokanda Ghosh, on the two documents of loan. However, the dismissal of this Application by the learned Metropolitan Magistrate is against the settled proposition of law. This Order has also caused serious prejudice to the petitioner /revisionist. Hence, the Revisionist *vide* present Petition has impugned the Order dated 03.07.2024.

8. **Submissions heard.**

9. It is not in dispute that the impugned cheque has been signed by the revisionist, who is the sole proprietor of his Firm. As per the submissions



made by the revisionist himself, the factum of these two documents being signed by the co-borrower, were duly brought to the knowledge of the petitioner, as well as, Mrs. Alokanda Ghosh in the Legal Notice dated 07.12.2020. It is the defence taken by the revisionist that the signatures of co-borrower, were not genuine. However, there was nothing to prevent the petitioner, to have examined his own Hand Writing Expert.

10. In his defence, the learned Metropolitan Magistrate has rightly observed that the fact in issue is not the disputed signatures of Mrs. Alokanda Ghosh. It is only the revisionist who has been made the accused and summoned in the Complaint under Section 138 of N.I. Act. There is no denial that the documents or the cheque bear the signatures of the accused. Admittedly, in the Complaint under Section 138 of N.I. Act. Mrs. Alokanda Ghosh is not an accused and the impugned cheque which is the subject matter in the complaint deals only the signatures of the petitioner, which are not under challenged.

11. Learned counsel on behalf of the revisionist has also not denied that there is no liability claimed against Mrs. Alokanda Ghosh and it is only the revisionist, who has been summoned as an accused. The signatures on any of the document, are not in dispute.

12. Therefore, the evidence by way of Hand Writing Expert, sought to be brought on record by the petitioner in regard to the signatures of Ms. Alokanda Ghosh, would not serve any purpose and is also not required for fair and just decision of the Court, but would rather delay the present Petition.

13. In view of these submissions, there is no merit in the present Petition, which is hereby dismissed.



14. The Petition is disposed of accordingly along with the pending application.

NEENA BANSAL KRISHNA, J

AUGUST 8, 2024/RS