

Uday S. Jagtap

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 464 OF 2019

Modern ERP Solutions

.. Applicant

Vs.

Landmark Techedge Pvt. Ltd. & Ors.

.. Respondents

....

Mr. Chetan G. Patil for the applicant

Dr. D.S. Krishnaiyer, APP for the respondent – State

Mr. Naveen B. Khaire for the respondent nos. 1 to 3

....

CORAM : PRITHVIRAJ K. CHAVAN, J.

DATE : 21st FEBRUARY, 2025.

P.C.

1. Heard learned Counsel for the applicant and the respondents.

2. Perused the impugned judgment as well as evidence of the complainant and the cross-examination.

3. At the outset, learned Magistrate has answered the 1st, 3rd, 4th and 5th points in the affirmative insofar as issuance of cheque by the accused in favour of the complainant, issuance of

statutory notice within limitation and despite service of notice non-compliance by the accused. The only question, which needs to be answered is as to whether the complainant had proved before the trial Court that the cheque was given by the accused for discharge of any liability or any legally enforceable debt?

4. Learned Counsel for the applicant has invited my attention to the Addenda of the agreement on page 27, which is extracted below:-

“In view of this poor performance of creating distributors network and creating demand from the market, Landmark agrees that pressing Modern ERP Solutions to buy 1000 product licenses and insisting to maintain a stock of 1000 product licenses is not justified, and that Landmark further agrees that the purchases may be in proportion to the growth in the distributors network. In case, if the two above parties still fail to appoint the district distributors in the states of Maharashtra and Goa and if there remains any unsold stock of products with Modern ERP Solutions, then Landmark and its directors individually assure Modern ERP Solutions to buy back and reimburse the cost of unsold goods, if any, after 31st Dec. 2014. Accordingly, Modern ERP Solutions has consented to this arrangement and Landmark and its directors personally, jointly and severally, accept the responsibility to reimburse Modern ERP Solutions for the costs of unsold product licenses, by paying the amount in the first week of January 2015.”

5. There is a clear stipulation in the said clause that, in case the parties failed to appoint the district distributors in the states of Maharashtra and Goa and if there remains any unsold stock of products with Modern ERP Solutions, then Landmark and its directors individually assure Modern ERP Solutions to buy back and reimburse the cost of unsold goods, if any, after 31st December, 2014.

6. It seems that the learned Magistrate has failed to correctly appreciate the evidence in that regard, which is evident from the findings returned in para 18 and 19 of the impugned order. The impugned judgment, therefore, needs interference in appeal and as such, the special leave to appeal is granted.

7. The application is disposed of.

8. List the appeal under the caption for “Final Hearing” on 10th March, 2025.

(PRITHVIRAJ K. CHAVAN, J.)