



**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-1920-MA-2016 (O&M)

Reserved on: 28.01.2025

Pronounced on: 29.01.2025

Vee Kay Concast Pvt. Ltd.

... Applicant

Vs.

M/s Stanely Products and another

... Respondents

CORAM: HON'BLE MR. JUSTICE HARPREET SINGH BRAR

Present: Mr. Suman Jain, Advocate,
Mr. Shubham Jain, Advocate,
Ms. Kiratbir Kaur, Advocate
for the applicant.

Mr. Manish Jain, Advocate
for the respondents.

HARPREET SINGH BRAR, J. (ORAL)

1. Instant application has been preferred under Section 378(4) of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.') seeking leave to file the appeal against the judgment dated 26.08.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana, vide which the complaint bearing COMA No.48101 of 2013, titled as '*Vee Kay Concast Pvt. Ltd. Vs. M/s Stanely Products and another*' filed under Section 138 of Negotiable Instruments Act,

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1881 (for short 'NI Act') was dismissed on the ground that the same is not within limitation and is time barred.

2. Brief facts of the case are that in order to discharge their legal liability, the respondents-accused issued two cheques i.e. cheque bearing No.535102 dated 01.01.2013 amounting to Rs.3.00 lakhs and cheque bearing No.529166 dated 01.01.2013 amounting to Rs.4,61,314/- drawn on Indian Bank, Kalsi Nagar, Ludhiana in favour of the complainant and on presentation, the aforementioned cheques were dishonoured vide memo dated 02.01.2013. Thereafter, the complainant served a legal notice dated 17.01.2013 through registered AD post demanding the cheque amount, however, the respondents-accused failed to make the payment. As such, the complainant filed the complaint (*supra*).

3. Learned counsel for the applicant, *inter alia*, contends that identical controversy between the same parties has been decided by this Court vide judgment dated 15.02.2023 passed in CRM-A-1308-MA-2016 in/and CRA-AS-78-2023. The same dates of cheques and all other relevant dates involved in both the cases are same and this Court, in the aforementioned judgment, concluded that the complaint (*supra*) is within limitation. It is further contended that legal notice dated 17.01.2013 was posted on 23.01.2013, as reflected from the postal receipt available on record. He further refers to the statement of accused recorded under Section 313 of the Code of Criminal

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Procedure, 1973 (for short 'Cr.P.C.') [now Section 351 of Bharatiya Nagarik Suraksha Sanhita, 2023 (for short 'BNSS')] and submits that there is complete denial by the respondents-accused with regard to receipt of legal notice, as such, in view of the provisions under Section 27 of General Clauses Act, 1897 (for short 'GC Act'), if the period of 07 days is to be taken into account for presumption of service of legal notice, then the same had been deemed to be served upon the respondents-accused. Thus, the period of 15 days calling upon the respondents-accused to make the payment demanded under legal notice started from 31.01.2013 and the respondents-accused had the time to make the payment upto 14.02.2013. As such, the complaint (*supra*), which was instituted on 11.03.2013, is within limitation.

4. *Per contra*, learned counsel for the respondents-accused has drawn attention of this Court towards para No.2 of the grounds of appeal and submits that this is admitted and pleaded case of the applicant-complainant that notice was served upon the respondents-accused on 23.01.2013. As such, once the specific date has been admitted and pleaded in the grounds of appeal, no further judicial scrutiny is required and the present application is liable to be dismissed on this ground alone. Perusal of para No.2 of the grounds of appeal clearly indicates that the complaint (*supra*) was not instituted within the stipulated period, after the notice was served upon the respondents-accused on 23.01.2013, as such, the complaint (*supra*) is barred by limitation.

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5. In rebuttal to the aforementioned arguments raised on behalf of the respondents-accused, learned counsel for the applicant-complainant submits that due to inadvertent typographical and drafting mistake, it has been mentioned in para No.2 of the grounds of appeal that notice was served upon the respondents-accused on 23.01.2013, however, the lower Court record and the evidence led by the parties would prevail upon any inadvertent mistake committed, while drafting the grounds of appeal. In this regard, learned counsel for the applicant-complainant has drawn attention of this Court towards lower Court record, especially the postal receipt as well as the statement of the respondents-accused recorded under Section 313 of Cr.P.C. (now Section 351 of BNSS), in which there is complete denial with regard to receipt of legal notice. There is no evidence available on record to prove that notice was actually received by respondents-accused on 23.01.2013. Further, perusal of postal receipt indicates that notice was posted through registered AD post on 23.01.2013 and it is not possible that delivery of same would happen on the same day.

6. I have heard learned counsel for the parties and perused the record of the case with their able assistance.

7. Section 27 of GC Act reads as under:-

“27. Meaning of service by post.—Where any Central Act or Regulation made after the commencement of this Act authorizes or requires any document to be served by post, whether the

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expression “serve” or either of the expressions “give” or “send” or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post, a letter containing the document, and, unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.”

8. The Hon'ble Supreme Court in ***C.C Alavi Haji Vs. Palapetty Muhd. and another, 2007 6 SCC 555*** held that Section 27 of GC Act gives rise to a presumption that service of notice has been effected, when it is sent to the correct address by registered post. Unless and until the contrary is proved by the addressee, service of notice is deemed to have been effected at the time at which the letter would have been delivered in the ordinary course of business. Similar view has been taken by the Hon'ble Supreme Court in ***Subodh S. Salaskar Vs. Jay Prakash M. Shah and another, (2008) 13 SCC 689*** and ***M/s Madan & Company Vs. Wazir Jaivir Chand, 1989 1 SCC 264***.

9. Apart from above, Section 114 of the Indian Evidence Act, 1872 (for short 'IE Act') to be read with Illustration (f) thereunder, which provides that when it appears to the Court that the common course of business renders it probable that a thing would happen, the Court may draw presumption that the thing would have happened, unless there are circumstances in a particular case, to show that the common course of business was not followed. Thus, Section 114 of IE Act enables the Court to presume the existence of any fact, which, it

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thinks, is likely to have happened, regard being had to the common course of natural events, human conduct and public and private business in their relation to the facts of the particular case. Consequently, the Court can presume that the common course of business has been followed in particular cases.

10. When aforesaid legal proposition is made applicable to communications sent by post, Section 114 of IE Act enables the Court to presume that in the common course of natural events, the communication would have been delivered at the address of the addressee. However, it is important to note that Section 27 of GC Act refers to a specific presumption, comparing to the presumption that is raised under Section 114 of IE Act, which is general in nature.

11. In view of the above legal position, though there is presumption of service by notice when sent under registered post, however, in case the registered cover containing the notice is not received back as undelivered, no time limit is provided within which service of notice upon the addressee is to be presumed. In this regard, Rule 99 of the Indian Post Office Rules, 1933 (for short 'Rules of 1933') is relevant, which provides as under:-

“If an addressee of a value payable postal article omits to take delivery of it within 7 days, following the days of its presentation or the date of delivery of an intimation or its arrival to him or to his accredited agent, or in the case of an article sent out for delivery through a village postman, the date of return to the post office of

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the village postman, after its first presentation or delivery of intimation of its arrival to the addressee or his accredit agent, the article shall be returned to the sender on the 8th day.

Provided that if in the meantime the addressee has applied in writing to the post office for the detention of the article for a further period not exceeding seven days beginning with the said eighth day and pays with the application a fee of rupees three for each day of such further period in the case of value payable parcels and rupees two for each day of such further period in the case of other value payable articles, the article shall not be returned to the sender until the expiration of the further period covered by the application. Any fee so paid shall in no circumstances be returned.”

12. A perusal of the Rules of 1933 indicates that in case the addressee of the article omits to take delivery thereof within 07 days following date of presentation, the article is to be returned to the sender on the 8th day, unless the addressee has applied within next seven days for its detention.

13. Since in the present case, the notice sent through registered AD post was not returned to the sender i.e. applicant-complainant as undelivered on the 8th day or thereafter, so it is to be presumed that addressee of the notice i.e. respondents-accused must have received the same within 07 days. As such, it is held that service of notice, in such circumstances, is to be assumed within a period of 07 days and therefore, the period of 15 days for making payment shall begin on the expiry of 07 days from the date of posting of the legal notice

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through registered AD post.

14. The factual matrix of the case indicates that there is specific denial by the respondents-accused with regard to receipt of legal notice and in such a scenario, provisions of Section 27 of GC Act would come into play and presumption in favour of the applicant-complainant arises with regard to service of notice on the correct address mentioned in the registered AD post and neither the contrary has been proved by the respondents-accused nor the registered AD post was received back undelivered by the applicant-complainant. Therefore, in view of the aforementioned provisions, it is presumed that the respondents-accused must have received the legal notice through registered AD post and in such a scenario, period of 07 days for the service of notice is to be taken into account and after the presumed service of notice, the respondents-accused had the opportunity to make the payment demanded vide legal notice, within a period of 15 days.

15. Since the legal notice in this case was posted through registered AD post on 23.01.2013, it is to be assumed that said notice was received by the addressee-accused on or before 30.01.2013 and the period of 15 days for making the payment shall begin from 31.01.2013, which will expire on 14.02.2013 and therefore, the complaint (*supra*) filed on 11.03.2013, being within next one month, is held to be within limitation.

16. In view of the aforesaid discussion, the impugned order dated

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26.08.2016 passed by learned Judicial Magistrate 1st Class, Ludhiana is hereby set aside. The complaint (*supra*) is held to have been filed within limitation. The matter is remanded back to learned trial Court to proceed further, in accordance with law.

17. Accordingly, present application seeking leave to file the appeal stands allowed and appeal is disposed of accordingly.

18. Both the parties are directed to appear before learned trial Court on or before 28.02.2025 for further proceedings.

19. Registry is directed to assign the appeal number to this case.

[HARPREET SINGH BRAR]
JUDGE

29.01.2025
vishnu

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No