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

+ **CRL.M.C. 6342/2023 & CRL.M.A. 23759/2023 (Stay)**

LARK INTERNATIONAL & ANR.

.....Petitioners

Through: Mr. M.K Khanna, Mr. Shubham Gupta, Ms. Tejasvi Kumar Sharma and Ms.Yamini Bansal, Advocates (through VC).

versus

SUN INDIA SERVICES PVT. LTD

.....Respondent

Through: Mr. Karan Kapoor, Advocate (through VC).

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

07.02.2025

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1. This hearing has been done through hybrid mode.
2. The present petition has been filed under Section 482 of the Cr.P.C. seeks following prayers:-

- i. Quash the CC No. 412/2019, U/s 138, 142 NI Act, along with its consequential proceedings, in the interest of justice.
- ii. Issue an appropriate order or any other appropriate order or direction, quashing the impugned order dated 01.08.2023 passed of Ld. Principal District and Sessions Judge in CR. No. 460/2023, South East, titled as "Lark International Vs Sun India Services Pvt. Ltd. & Anr."
- iii. Pass any other or further order(s) as this Hon'ble Court may deem fit and proper in the interest of justice."

3. In the present case, respondent/complainant had filed a complaint under Sections 138 read with 142 of the Negotiable Instruments Act, 1881 (hereinafter referred to as 'NI Act') against the petitioner with respect to two cheques bearing no. 472312 dated 22.10.2018 amounting to Rs. 18,12,000/- and cheque no. 472313 dated 22.10.2018 for an amount of Rs. 4,54,449/- towards professional charges for providing payroll management services and



maintenance of personnel in terms of service agreement dated 27.08.2018. The record reflects that the matter was settled between the parties before the Mediation Centre *vide* settlement deed dated 17.01.2020; however, the petitioner failed to pay the settled amount and thus, the settlement was set aside.

4. Notice under Section 251 of the Cr.P.C. was served on the petitioner on 20.03.2021 and *vide* order dated 27.07.2022, on an application under Section 143A of the NI Act, the learned Trial Court directed the petitioner to pay 10% of the cheque amount to the respondent/complainant within 60 days towards interim compensation. It is a matter of record that despite several opportunities, the petitioner failed to make any interim compensation.

5. In the meantime, the petitioner preferred a petition under Section 482 of the Cr.P.C. (CRL. M.C. 5281/2022) seeking quashing of the complaint before this Court which was disposed of *vide* order dated 12.07.2023 by observing as under:-

“1. Learned counsel for the petitioner seeks permission to withdraw the present petition with the liberty to file an appropriate revision petition before the learned Sessions Court. Learned counsel prays that however in the interim some protection may be granted.

2. In view of the submissions made above, the present petition is dismissed as withdrawn with the liberty as prayed for. However, in the meantime, no coercive action shall be taken against the petitioner for two weeks i.e. till 26.07.2023.

3. After 26.07.2023, learned Trial Court may proceed with the matter in accordance with law or subject to the directions if any, of the learned Sessions Court.

4. Copy of this order be given dasti under the signature of the Court Master.”

6. Thereafter, the petitioner preferred a revision petition before learned Sessions Judge *vide* Criminal Revision No. 460/2023, challenging the order



dated 23.03.2019 passed by the learned Metropolitan Magistrate in CC No. 412/2019 summoning the petitioner for offence under Section 138 of the NI Act. It is noted that the said revision petition was filed alongwith an application under Section 5 of the Limitation Act seeking condonation of delay in filing the said petition. Learned Principal District and Sessions Judge, while dismissing the said revision petition observed as under:

“9. It is apparent from the Trial Court record that post summoning, revisionist has been appearing before Ld. Trial Court and has participated in the proceedings and was duly assisted by his counsel. The proceedings with regard to summoning order, Mediation Settlement dated 17.01.2020, notice U/S 251 Cr.P.C., order of 10% interim compensation U/S 143A NI Act, all were done in presence of revisionist/accused and his counsel. It is not the case of revisionist that he was not aware about the impugned order of summoning or he did not have requisite legal assistance. It is a matter of record that revisionist/accused has never challenged or objected issuance of legal notice beyond 30 days during the entire trial. The case has traveled till the stage of complainant evidence. It is matter of record that revisionist/accused is in default not only of the Mediation Settlement dated 17.01.2020 but has also violated the court order dated 27.07.2022, whereby interim compensation of 10% of the cheque amount was directed to be paid by him. Despite gaining time on multiple occasions, revisionist/accused has failed to comply with the court order granting interim compensation and he had directly approached the Hon’ble High Court for quashing of complaint case challenging its maintainability after 2 ½ years of trial at his whims and fancies. It can be safely inferred that revisionist/accused is delaying and prolonging the trial in order to avoid the orders of payment of interim compensation passed against him.

10. It is no gainsaying that the law aids the vigilant and not the indolent. It is a settled law that on expiry of period of limitation, a valuable right accrues in favour of other side and same cannot be defeated in a routine manner and existence of sufficient cause is a condition precedent for exercise of discretion by the court for condoning the delay. If the delay is not properly, satisfactorily and convincingly explained, court cannot condone delay merely on asking of aggrieved parties. As per law, the revisionist/accused is required to explain the delay on day to day basis. Revisionist/accused has also taken a ground that his present counsel



informed him about the non-maintainability of instant complaint, after which he moved to the Hon'ble High Court. Change of counsel at a belated stage and thereafter challenging an order after lapse of more than 4 years by raising an issue which was never challenged during entire trial is no good ground for seeking condonation of delay.

11. Recently, Hon'ble Delhi High Court in case titled as ***Bharat Kalra Vs Raj Kumar Chabra***, CM (M) No.429/2021 dated 12.08.2021 has observed as under :”

“13. While it is true that the power to condone delay is intended to advance substantive justice, nevertheless, procedure cannot be given a complete go by. The powers of the court to condone delay is to be used in appropriate cases. No litigant can assume that, as a matter of right, the delay in taking steps would be condoned, because procedure is the handmaiden of substantive justice. Rights accruing to the opposite party on account of the delayed action need to be also kept in mind. The reasons given for explaining the delay are of paramount importance and not the length of the delay. The shortness of delay alone ought not to suffice for exercise of discretion to condone it. Cogent and clear explanations have led the courts to condone the delay, even of five years in filing the pleadings.”

12. As per law, the period of limitation of filing the revision petition is 90 days, which expired on 11.06.2019, from the date of the impugned order dated 23.03.2019, whereas, revisionist/accused has filed the present petition on 21.07.2023 i.e. after a delay of 4 years. Even if, the period during which the revisionist was pursuing his remedy in the Hon'ble High Court of Delhi is not counted for the purpose of limitation still there is a delay of more than 3 years after the passing of the impugned order which is not explained by the revisionist. In the instant case, as mentioned above, the revisionist has failed to show any sufficient cause for condonation of delay of more than 4 years. The revisionist/accused filed quashing petition before Hon'ble High Court and later withdrew it on the pretext of filing the revision petition before the Ld. Sessions Court and obtained liberty for the same. It seems that under the garb of High Court orders, revisionist/accused is misinterpreting the ratio of the said orders and making it a ground for condonation of delay. Therefore, no good ground is made out for condoning the delay and the present revision is hopelessly time barred.

13. Even on merits, as per the Id. Counsel for the revisionist/accused it



is matter of record that there appears a delay of 2 days in issuance of legal notice dated 26.11.2018 as the cheque was dishonored on 24.10.2018. The relevant provisions of Section 138 (b) NI Act is reproduced herein under:-

*“(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within thirty days **of the receipt of information by him** from the bank regarding the return of the cheque as unpaid.”*

14. Even the perusal of the record does not reveal as to on which date the information from the bank regarding the return of the cheque as unpaid was received by the respondent/complainant, which fact is important to ascertain the effective date from which issue of limitation in issuance of legal notice begins. This issue is a mixed question of facts and law and not only of law alone, which cannot be decided without there being an evidence of both the parties. During the entire trial period of around 4 ½ years, the issue of non-compliance of statutory requirement in sending legal notice within 30 days was never challenged during trial and has been raised for the first time before the Hon’ble High Court that too after more than 2 ½ years. Since 2019 itself, revisionist/respondent is being represented and assisted by an Advocate, who is defending his case at all stages. Change of counsel to agitate an 4 years old order is no good ground in law. Revisionist/accused cannot be permitted to take the Courts for ride at his whims and fancies. The filing of the revision petition after 4 years is an attempt to prolong the trial and escape from his legal liability of making payment of interim compensation orders U/S 143A NI Act dated 27.07.2022. Admittedly, revisionist is in violation of interim compensation order dated 27.07.222 despite availing multiple opportunities and gaining time and instead had preferred quashing petition before Hon’ble High Court and revision before this Court on the ground which were never protested before the Ld. Trial Court. The default on the part of revisionist/accused is evident from the fact that he even violated the terms of Mediation Settlement dated 17.01.2020, for which respondent/complainant has sought liberty to file application U/S 421 r/w 431 Cr.P.C.”

7. This Court has heard the submissions of learned counsel for the parties and has gone through the record of the case.



8. The only ground taken in the present petition again is with respect to delay in issuing the notice under Section 138 of the NI Act. Learned Principal District and Sessions Judge has examined the record and has come to a conclusion that the record does not reveal as to on which date the information from the bank regarding the return memo was received by the respondent/complainant. In these circumstances, it was observed that the issue becomes a mixed question of law and fact and the same has to be decided after recording the evidence in the present case.

9. Although the second revision petition is barred under the Code of Criminal Procedure; however, the party can approach this Court invoking the jurisdiction under Section 482 of the Cr.P.C. It is, however, a settled law that the scope of such jurisdiction with regard to a petition in the nature of second revision would be extremely limited and the petitioner has to demonstrate an illegality or perversity in the order passed by the Court.

10. In view of the above discussion, this Court finds no infirmity or illegality in the impugned order dated 01.08.2023 passed by the learned Principal District and Sessions Judge.

11. Accordingly, the present petition is dismissed and disposed of accordingly.

12. Pending application(s), if any, also stands disposed of.

13. Copy of the order be sent to the concerned learned Trial Court for necessary information and compliance.

14. Order be uploaded on the website of this Court *forthwith*.

AMIT SHARMA, J

FEBRUARY 07, 2025/sn

Click here to check corrigendum, if any