

(2016) 03 CAL CK 0041
In the Calcutta High Court
Case No : C.R.A. 171 of 2014

Annapurna Cast Limited

APPELLANT

Vs

Akshaya Technologies Pvt. Ltd. and Others

RESPONDENT

Date of Decision : 11-03-2016

Acts Referred:

Constitution of India, 1950 — Article 142
Criminal Procedure Code, 1973 (CrPC) — Section 255 (1)
Negotiable Instruments Act, 1881 (NI) — Section 132, Section 138, Section 142,
Section 142 (b)
Penal Code, 1860 (IPC) — Section 42

Citation : (2016) 03 CAL CK 0041

Hon'ble Judges : Tapash Mookherjee, J.

Bench : Single Bench

Advocate : Shyamal Chakraborty and Debarati Banerjee, Advocates, for the Appellant; Tirthankar Ghosh and Satadru Lahiri, Advocates, for the Respondent

Final Decision : Dismissed

Judgement

Tapash Mookherjee, J.—1. This is an appeal against a judgment and order of acquittal passed by the learned Metropolitan Magistrate, 3rd Court, Calcutta in complaint case No. 3000/2000 (T.R. Case No. 366/2000) dated 20.07.2011. The case in the Trial Court was a case under Section 138 of the Negotiable Instruments Act, 1881 (in short the N.I. Act). By the aforesaid judgment and order the Trial Court acquitted all the Respondents/Accused of the acquisition under Section 138 of the N.I. Act.

2. The Appellant/Complainant Annapurna Cast Limited is a company registered under the companies Act. Accused No. 1. M/s. Akshaya Technologies (P) Ltd. the Respondent No. 1 in this appeal, is also a Company and the other three Respondents in this appeal are the directors of the company.

3. The facts leading to the appeal in short, are as follows:--

4. The Appellant and the Respondents had business relations between them. In

usual course of such business transactions the Appellant Company supplied some goods to the Respondent/Company and in partial discharge of their existing liabilities the Respondent/Company issued two cheques, dated 03.10.1999 and 04.10.1999 for Rs. 1,40,000.00 (rupees one lakh forty thousand only) each, both drawn on Bank of India, Clubside Branch at Ranchi in favour the Complainant/Company. Both those cheques were deposited for encashment by the Complainant/Company in their account with Bank of India, Lindsay Street Branch, Calcutta and both those cheques were returned unpaid for insufficiency of fund in the account of the Respondent/Company. Demand notice was, therefore, sent by the Appellant/Company but in spite of such notice the Respondent/Company did not pay the money demanded. The Appellant/Company therefore lodged a complaint against the Respondent/Company and its Directors under Section 138 of the N.I. Act. The Respondents appeared and contested the case on several grounds one of which was the ground of limitation prescribed in Section 142 (b) of the N.I. Act. Both the parties adduced oral as well as documentary evidence. Considering the evidence thus adduced, the Trial Court held that the Appellant's claim was barred by limitation and the Trial Court dismissed the Appellant/Complainant's case on such ground of limitation alone and acquitted all the respondents from the case. Being aggrieved by and dissatisfied with such order of acquittal the Appellant/Company preferred the present appeal.

5. The Trial Court has discussed the issue of limitation at length and no other issue involved in the case has been discussed or decided by the Trial Court.

6. The following dates are very much important to decide the issue of limitation.

7. The two cheques in question were issued by the Respondent/Company, one on 03.10.1999 and the other on 04.10.1999, both for Rs. 1,40,000.00 (rupees one lakh forty thousand only) and according to the Appellant both the cheques had been presented for encashment within the period of their validity and admittedly both those cheques were returned dishonoured due to insufficiency of fund in the account of the Respondent/Company and the fact of such dishonour came to the knowledge of the Appellant on 06.04.2000. Thereafter, demand notices were issued by the Appellant through registered post with A.D. and both the notices were posted on 18.04.2000. Thereafter, the A.D. Cards did not reach the Appellant in due course and hence the Appellant wrote letters to the Postal authority on 12.05.2000 and 17.05.2000 for information regarding the service of those letters. The Appellant thereafter received the information by the letter of the postal authority dated 03.06.2000, 17.06.2000 and 23.06.2000 and came to know that the demand notice had been duly served upon the Respondent/Company on 24.04.2000. Subsequently the Appellant filed the complaint in the Trial Court on 29.06.2000. It is, therefore, found that the complaint was not filed within one month from the date on which cause of action arose, as prescribed in Section 142 (b) of the N.I. Act. A question arises in this case as to when cause of action arose?

8. Learned Advocate for the Appellant vehemently argued that unless the drawee knows the exact date of service of the demand notice upon the drawer of the cheques it is not possible for the drawee to compute the period of limitation within which the complaint has to be filed as per law. So, the period of limitation has to be computed in the case on and from the date of knowledge of the Appellant regarding the service of the demand notice upon the Respondent/ Company which is 23.06.2000. The complaint case was filed on 29.06.2000. So, according to Mr. Chakraborty, learned Advocate for the Appellant the complaint was filed within the period of limitation.

9. On the other hand Mr. Ghosh, learned Advocate for the Respondents argued that it is never the date of knowledge of the drawee regarding the service of the demand notice upon the drawer but the actual date of service of the demand notice upon the drawer which is always the relevant factor to compute the period of limitation. Mr. Ghosh relied on the following judgments on the point. (I) 1999 Supreme Court Cases (Cri) 600 (Sil Import, USA- versus - Exim Aides Silk Exporters, Bangalore) (II) 2002 C Cr LR (Cal) 861 (Sri Moinuddin Munshi- versus - Sri Abhijit Pal & Anr.) (III) 2001 (1) CHN 235(Darshan Singh - versus - State of W. B.) (IV) 2007 (2) CHN (Cal) 893 (Bangur Finance Ltd. - versus - Tejesh R. Ghosh) (V) , (2012) 2 C Cr LR (Cal) 850 (A.K. Maheshwary - versus - The State of West Bengal).

10. It is to be considered now when the cause of action accrues in a case under Section 138 of the N.I. Act. Is it after the expiry of 15 days from the actual service of notice upon the drawer of the cheque or after expiry of 15 days from the date of knowledge of the drawee regarding the service of notice upon the drawer?

11. In the case of Sil Import, USA- versus - Exim Aides Silk Exporters, Bangalore (supra) Hon'ble Supreme Court has clearly laid down that the starting date of the accrual of cause of action in a case under Section 138 of the N.I. Act is after the expiry of 15 days from the receipt of the demand notice by the drawer of the cheque in question and once the cause of action starts the offence is completed on the failure of the drawer to pay the amount of the cheque within 15 days there from. In all the following cases (I) 2002 C Cr LR (Cal) 861 (Sri Moinuddin Munshi- versus - Sri Abhijit Pal & Anr.) (II) 2001 (1) CHN 235(Darshan Singh - versus - State of W. B.) (III) 2007 (2) CHN (Cal) 893 (Bangur Finance Ltd. - versus - Tejesh R. Ghosh) (IV) , (2012) 2 C Cr LR (Cal) 850 (A.K. Maheshwary - versus - The State of West Bengal) our High Court have also expressed the same view. So, the law is now clear that cause of action for filing a complaint for dishonour of a cheque under Section 138 of the N.I. Act will be reckoned immediately following the day on which the period of 15 days from the date of receipt of the notice by the drawer, expires.

12. It has been mentioned earlier that the demand notice had been received by the Respondent/Company on 24.04.2000. The date of knowledge of the Appellant regarding the date of service of notice upon the drawer is immaterial.

The fact being so, the present complaint having been filed on 29.06.2000 was definitely filed after the period of limitation. Mr. Chakraborty during hearing admitted that if the date of accrual of cause of action is computed from the expiry of 15 days after the service of notice upon the Respondent/Company then the filing of the complaint was beyond the period of limitation.

13. The next point of argument of Mr. Chakraborty is that if it is held by the Court that the filing of the complaint is beyond the period of limitation then the Appellant should be given an opportunity to explain the reason for such delay under the provision in Section 142 (b) proviso. He further submitted that for such purpose the case should be sent back to the Trial Court on remand. Mr. Chakraborty has relied on a decision of the Hon'ble Apex Court in Pawan Kumar Ralli v. Maninder Singh Narula reported in , 2014 (4) CHN (S.C.) 156, to substantiate his point. He has further submitted that the provision in Section 142 (b), proviso amended the procedural law of the Negotiable Instruments Act and hence it has a retrospective effect. He has further added that although the aforesaid provision of condonation of delay was not there when the present complaint was filed but the amendment came into effect during the pendency of the case. So, the learned Advocate for the Appellant in the Trial Court could have prayed for the condonation of delay before the Trial Court during the pendency of the case and if he had not done so it was his ignorance or fault for which the Appellant should not be asked to suffer. Mr. Chakraborty also contended that even though there was no such formal prayer for condonation of delay by the Appellant then also the Trial Court should have considered it for the sake of sustentative justice. Mr. Chakraborty also argued that Section 138 of the N.I. Act is a benevolent law in favour of a drawee of a cheque and as such, technicalities should always be avoided. He has cited the decision of the Gujrat High Court, Kumudben Jayantilal Mistry - versus - State of Gujarat & Anr., reported in , 2007 CRI. L. J. 2182. He has also cited the following decision on the point. 1. , 2007 CRI. L. J. 3699 (Managing Director, Woodburn Developers and Builders Pvt. Ltd. - versus - Smt. Debamaya Panigrahi).

14. On the other hand Mr. Ghosh argued that the law of limitation is a substantive law and as such it can never have any retrospective effect. He also argued that the vested right of the Respondents accruing due to the filing of the complaint after the period of limitation would be defeated if the Appellant is given the opportunity at this stage to explain the delay. Mr. Ghosh further submitted that the present complaint was filed on 29.06.2000 when the provision of Section 142 (b) proviso was not there at all. So, taking cognizance of a time barred complaint by the Trial Court was void ab-initio and it is not at all a curable defect. He has cited a decision of the Hon'ble Apex Court on the point in Anil Kumar Goel- versus - Kishan Chand Kaur, reported in , AIR 2008 Supreme Court 899.

15. As mentioned earlier the present complaint was filed on 29.06.2000. The proviso of Section 142 (b) was added by the amendment Act of 2002 with effect

from 06.02.2003. So, when the present complaint was filed there was no scope for condonation of delay in case of any time barred complaint. Before such amendment the provision of the Section 142 was that no Court shall take cognizance of any offence punishable under Section 138 of the N.I. Act unless such complaint is made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138. It has been held earlier that the present complaint was not filed within one month of the date on which the cause of action arose in the case. The question now comes for consideration is whether the inclusion of proviso to Section 142 (b) by the amendment Act of 2002 has any retrospective effect, or not. In the decision of the Gujrat High Court (supra) cited by Mr. Chakraborty it has been held that the amendment of Section 142 of the N.I. Act in the year 2002 introducing the provision for condonation of delay has retrospective effect at least for the pending cases. But the Hon''ble Apex Court's view as expressed in the case of Anil Kumar Goel (supra) is completely otherwise. In para 9 of the aforesaid judgment it has been stated that there is nothing in the amendment of the Section 142 (b) of the N.I. Act by the Act 55 of 2002 to show that the same was intended to operate retrospectively. However, the point was not directly in issue in that case.

16. In the case Subodh S. Salaskar - versus - Jayprakash M. Shah & Anr. decided on 1st August, 2008 (Criminal Appeal NO. 1190 of 2008 arising out of SLP (Cri) No. 541 of 2008), , 2008 (13) SCC 689. It has been clearly held that the amendment of Section 142 of the N.I. Act has no retrospective effect. This judgment has been referred to in the judgment of Pawan Kumar Ralli (supra) cited by Mr. Chakraborty.

17. In Pawan Kumar Ralli's case (supra) cited by Mr. Chakraborty the cheques in question were issued in the year 2012 and the complaint under Section 132 of the N.I. Act and Section 420 of the Indian Penal Code was filed thereafter. So, the provision of condonation of delay was there when the complaint in the said case was filed. That apart, in para 25 of the aforesaid judgment Hon''ble Apex Court has clearly mentioned that the said judgment has been passed exercising the authority of the Hon''ble Apex Court under Article 142 of the Constitution of India.

18. To conclude, learned Trial Court had taken cognizance in the present case on the basis of a time barred complaint which was definitely illegal. In consequence the final decision of the Trial Court finding all the Respondents not guilty of the offence under Section 138 of the N.I. Act and acquitting all the Respondents under Section 255 (1) Cr. P. C. is correct in law.

19. Except the issue of limitation the Trial Court has not dealt with any other point involved or raised in the case. So, no decision of this Court is needed on any other point raised.

20. In view of the decisions recorded above the appeal is dismissed. The

judgment and order dated 20.07.2011 passed by the learned Metropolitan Magistrate, 3rd Court, Calcutta in complaint case No. 3000/2000 is hereby affirmed.

21. Urgent certified photocopy of this judgment, if applied for, be supplied to the learned Counsels for the parties upon compliance of all formalities.