

(2002) 10 AP CK 0065

In the Andhra Pradesh High Court

Case No : Criminal Petition No. 2887 of 2002

Apporv Steel Udyog and Another

APPELLANT

Vs

Pennar Industries Limited and Another

RESPONDENT

Date of Decision : 01-10-2002

Acts Referred:

General Clauses Act, 1897 — Section 9
Limitation Act, 1963 — Section 12
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2002) 10 AP CK 0065

Hon'ble Judges : C.Y. Somayajulu, J

Bench : Single Bench

Advocate : M. Naga Raghu, for the Appellant; M. Viswanadham, for the Respondent

Final Decision : Dismissed

Judgement

C.Y. Somayajulu, J.—The short and interesting point for consideration in this petition is whether the day on which intimation of dishonour of the cheque sent by the banker of the complainant in a proceeding u/s 138 of Negotiable Instruments Act (the Act) has to be excluded or included in calculating the fifteen days time mentioned in proviso (b) to Section 138 of the Act.

2. 1st respondent filed C.C. No. 88 of 2001 in the Court of the IV Metropolitan Magistrate, Hyderabad u/s 138 of the Act, alleging that cheque bearing No. 844016 dated 8-3-2000 drawn on Corporation Bank, Satyanarayanapuram Branch, Vijayawada, for Rs. 50,000/- issued by the petitioner was returned for insufficient funds and after intimation of dishonour was served on him on 22-3-2000, he sent the statutory notice calling upon the petitioner to pay the amount covered by the bounced cheque on 6-4-2000 and that the petitioner even after receiving the said notice did not pay the amount covered by the bounced cheque.

3. The contention of the learned counsel for the petitioner is that the complaint is

liable to be quashed because statutory notice of dishonour was issued 15 days after knowledge of dishonour of the cheque, as 6-4-2000, the date on which notice of dishonour was issued, would be 16th day from 22-3-2000 i.e., the date on which 1st respondent had knowledge of the dishonour of the cheque issued by the petitioner. Placing strong reliance on HARSUKHLAL LAXMANBHAI VAGODIA AND ANOTHER vs. STATE OF GUJARAT AND ANOTHER, 1999(4) Crimes 213 learned counsel for 1st respondent contended that the day on which 1st respondent received the intimation of dishonour i.e., 22-3-2000, has to be excluded while calculating the period of 15 days contemplated by proviso (b) to Section 138 of the Act and if the period is so calculated, 6-4-2000 would be 15th day from 22-3-2000 and so there is no breach of proviso (b) to Section 138 of the Act.

4. In computing time the ordinary rule is to exclude the first and include the last day of the period prescribed, so that the party will have the advantage of all the days of time prescribed as limitation. The work in Courts begins at 10.30 A.M. on all working days. The Bank may send the intimation of dishonour of cheque either through a messenger or through post, and the said intimation can be received by the addressee either in the morning or evening. If the addressee is an employee and if the communication is received in his house, it would not be possible for him to have knowledge of the communication till he goes back to his house, which would usually be after 5 P.M. only i.e., after the working hours of the Court. If in that type of cases the day of receipt of the communication is included in computing the period of limitation, for no fault of the addressee one day time would be lost to the complainant. In my opinion Section 12 of Limitation Act which lays down that the first day of cause of action has to be excluded in computing the period of limitation, can be taken as a guide for computing period of 15 days notice contemplated by proviso (b) to Section 138 of the Act, though the said Section does not in terms apply to proceedings before criminal Courts. A Division Bench of the Madras High Court in THE OFFICIAL RECEIVER of MALABAR vs. PADMANABHA MENON ILR 1955 Mad 511 also held that the first day from which time begins to run must be excluded.

5. In HARSUKHLAL LAXMANBHAI case (1 supra), relied on by the learned counsel for the 1st respondent, the learned Judge relying on Section 9 of the General Clauses Act held that the day on which notice of dishonour was received has to be excluded. Section 9 of the General Clauses Act reads as follows:

"(1) In any Central Act or Regulation made after the commencement of this Court, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time, to use the word "from", and, for the purpose of including the last in a series of days or any other period of time, to use the word "to".

(2) This Section applies also to all Central Acts made after the third day of January, 1868, and to all Regulations made on or after the fourteenth day of January, 1887."

Proviso (b) to Section 138 of the Act reads-

"(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 fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid". (underlining mine)

Since the word "from" is not used in proviso (b) to Section 138 of the Act, strictly speaking Section 9 of the General Clauses Act may not apply to the notice contemplated by proviso (b) to Section 138 of the Act.

6. In view of the general rule of limitation that the first day on which the cause of action accrued has to be excluded and the last day has to be included while computing the period of limitation, in my considered opinion the date on which the intimation of dishonour of cheque is received by the payee or the holder in due course has to be excluded while calculating the period of 15 days mentioned in proviso (b) to Section 138 of the Act. So 22-3-2000 on which date intimation of dishonour was received by the 1st respondent has to be excluded in calculating 15 days period mentioned in proviso (b) to Section 138 of the Act. Since notice was issued on 6-4-2000, it means that the notice of dishonour was issued on the 15th day of receipt of the intimation of dishonour of the cheque was received by the 1st respondent. So the said notice is well within 15 days period contemplated by proviso (b) to Section 138 of the Act. Therefore I am not able to agree with the contention of the learned counsel that notice of dishonour was issued beyond the period of 15 days prescribed by proviso (b) to Section 138 of the Act and so I find no grounds to quash the proceedings.

7. Therefore the petition is dismissed.