

(2009) 01 DEL CK 0135

In the Delhi High Court

Case No : Criminal M.C. No. 3648 of 2007

Elegant Finvest P. Ltd.

APPELLANT

Vs

Bharat Gulati and Another

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 256, 378, 397, 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 01 DEL CK 0135

Hon'ble Judges : Aruna Suresh, J

Bench : Single Bench

Advocate : Sudhir Sharma, for the Appellant; Nemo, for the Respondent

Final Decision : Dismissed

Judgement

Aruna Suresh, J.—Vide this common order, I shall consider eight CrI. M.C. filed by the petitioner challenging the order of the trial court dated 4.5.2007 passed in CC Nos. 345/1/05, 347/1/05, 343/1/05, 346/1/05, 342/1/05 and 1807/1/05 and the orders dated 5.5.2007 passed in CC Nos. 348/1/05 and 344/1/05, whereby the learned MM was pleased to dismiss the complaints of the petitioner for non-prosecution u/s 256 of Criminal Procedure Code (hereinafter referred to as Cr.P.C.). Revisions against the said orders filed in the Court of Additional Sessions Judge also stood dismissed on 3.7.2007 in view of the provisions contained in Section 378 of Cr.P.C. Aggrieved by the said orders of the learned MM and of the Revisional Court, these petitions have been preferred in this Court.

2. Petitioner filed eight complaints against different persons (respective respondents in each petition) u/s 138 of the Negotiable Instruments Act (hereinafter referred to as NI Act). All the complaints were being taken up together by the trial court. As per the petitioner, complaints were at pre-summoning stage and the next date of hearing was fixed for 7.5.2007 by the Ahlmad of the court as MM and reader of the court were on leave on 21.4.2007. However six of the complaints being CC Nos. 345/1/05, 347/1/05, 343/1/05,

346/1/05, 342/1/05 and 1807/1/05 were dismissed by the learned MM on 4.5.2007 for non prosecution and two complaints being CC Nos. 348/1/05 and 344/1/05 were dismissed on 5.5.2007 for non prosecution and the respondents in each complaint were acquitted.

3. Learned Counsel for the petitioner has submitted that the order of the learned MM was erroneous since summons were not issued to the respondents but they were acquitted due to non prosecution. The Ahlmad of the court gave the next date of hearing as 7.5.2007 in all the complaints and learned MM passed impugned orders erroneously as none of the eight complaints figured in the cause list on the date fixed i.e. 7.5.2007 and it was only on enquiry that, petitioner came to know that six of the complaints were dismissed on 4.5.2007 and the other two complaints were dismissed on 5.5.2007.

4. Learned Counsel for the petitioner has also submitted that the Revisional Court did not adopt proper approach while dismissing the revision petition, as, correction of the erroneous order passed by the learned MM was within the Sessions Court's power contemplated u/s 397 of Cr.P.C. In support of his contentions, he has relied on Pepsi Foods Ltd. and Another Vs. Special Judicial Magistrate and Others,

5. Petitioner was directed by this Court to file certified copies of the entire proceedings of the trial court in the criminal complaints but despite opportunity granted, only copy of the complaint was filed and certified copies of the entire proceedings, as directed, were not filed. It was in the absence of the relevant orders of the trial court that arguments of the learned Counsel for the petitioner were heard. The Court, therefore, could not get any assistance from the proceedings of the trial court.

6. Precisely, the case of the petitioner is that none could appear on behalf of the petitioner either on 4.5.2007 or 5.5.2007 as the date given to the petitioner by the Ahlmad and noted by the Counsel in his diary was 7.5.2007. It is pertinent to mention here that Counsel for the petitioner has not placed on record any copies of his diary or of his brief to convince the Court that the date which was given to the petitioner by the Ahlmad was 7.5.2007. It is also not known if learned MM was on leave on 21.4.2007; the previous date of hearing fixed before him whereafter the complaints were listed for 7.5.2007 as alleged. In fact, petitioner has not placed on record any evidence to support its averments addressed in the Court. It is not known if, at all, the trial court had taken cognizance of the offence and had issued summons for appearance against the respondents. According to the petitioner, the order of dismissal of the complaints for non prosecution was erroneous because summons were not issued to the respondents. This fact could be verified only when the certified copies of the proceedings were made available for the scrutiny of this Court.

7. Impugned order of the learned MM dated 4.5.2007 and 5.5.2007 in all the complaints is verbatim the same. It reads:

Present: None for complainant despite repeated calls. It is 3.30 p.m, Fourth call since morning.

As observed, the complainant has not taken steps for summoning of the accused. I am of the opinion that the complainant is not interested to pursue the complaint. Accordingly the complaint is dismissed u/s 256 Cr.P.C. for non-prosecution. Accused is acquitted. Original documents, if any, be returned after cancellation of endorsement. File be consigned to record room.

8. As per this order, it is clear that trial court had passed an order for summoning of the respondents after taking cognizance of the offence u/s 138 of the NI Act. However, the petitioner did not take any steps for summoning of the accused. Trial court also observed that complainant was disinterested in pursuing the complaints and it was under these circumstances, the complaints were dismissed for non prosecution. Observation of the learned MM regarding disinterest of the complainant in prosecuting the complaints must have been based on the conduct of the petitioner on previous occasions and on the dates fixed by the trial court for prosecuting the complaints.

9. As pointed out above, the petitioner has failed to give proper assistance even to this Court despite directions. It was for the petitioner to substantiate its stand that Ahlmad of the trial court had given them the next date of hearing as 7.5.2007, but the trial court took up these complaints on a pre date and dismissed them for non prosecution. Conduct of the petitioner is obvious as even after filing these petitions, petitioner has not seriously prosecuted these petitions from the first date of its institution.

10. Perusal of the record indicates that after filing of these petitions, two dates were taken by the Counsel for the petitioner himself and no proceedings could be conducted. None had appeared on behalf of the petitioners on 20.2.2008 and the matter was renotified for 3.3.2008. From November 2007 till 3.3.2008 petitions were being adjourned on behest of the petitioner. First order of issuance of notice was passed on 3.3.2008. On 14.5.2008, petitioner was directed to file certified copies of the entire proceedings conducted by the trial court in the criminal complaints which was not complied with and in the absence of the certified copies, this Court proceeded with hearing the arguments on the petitions on 23.9.2008. Under these circumstances, the trial court rightly observed that complainant was not interested in prosecuting the complaints and accordingly dismissed them.

11. Pepsi Foods Ltd. and Anr. (supra) is of no help to the petitioner in this case. The Supreme Court considered the scope of powers of the High Court in Criminal Writs. Scope of powers of the High Court in a criminal writ is not an issue in these petitions. It is no longer res-integra that High Court has the power of judicial review in criminal matters u/s 482 Cr.P.C. In the said case accused had filed a writ petition challenging the summoning order of the trial court whereas in the present case it is the complainant who has filed this writ petition challenging

the order of the learned MM and of the revisional court whereby its complaints were dismissed for non prosecution.

12. For the foregoing reasons, I do not find any reason to interfere in the impugned order of the learned MM dated 4.5.2007 and 5.5.2007 dismissing the complaints of the petitioner and the order dated 3.7.2007 of the revisional court. Hence, petitions are hereby dismissed.