
(2006) 10 DEL CK 0104

In the Delhi High Court

Case No : CRL REV P. No"s. 417 and 419 of 2003

Gujarat Insecticides Ltd.

APPELLANT

Vs

Pioneer Products Ltd. and Another

RESPONDENT

Date of Decision : 30-10-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 470, 473
Negotiable Instruments Act, 1881 (NI) — Section 138, 142

Citation : (2006) 10 DEL CK 0104

Hon'ble Judges : Badar Durrez Ahmed, J

Bench : Single Bench

Advocate : Anil Kher, for the Appellant; Navin, for the Respondent

Judgement

Badar Durrez Ahmed, J.—These two revision petitions are taken up together as they arise out of similar circumstances involving two

separate cheques of Rs. 3,30,000/- and Rs. 2,50,158/-.

2. These revision petitions are directed against the order dated 20.03.2003 passed by the learned Additional Sessions Judge, whereby the

complaints filed by the petitioner u/s 138 of the Negotiable Instruments Act, 1881, were dismissed purely on the ground that the same had been

presented beyond the period of limitation.

3. The sequence of events relevant for the present revision petitions are that two cheques for Rs. 3,30,000/- and Rs. 2,50,158/- were issued in

favor of the petitioner by the respondents on 18.11.1995. The cheques were presented for payment on 17.05.1996 and they were returned as

having been dishonoured on 18.05.1996. A legal notice was issued on 28.05.1996 u/s 138 of the Negotiable Instruments Act, 1881. Since no

reply to the notice was received nor was the amount of the cheques forthcoming,

the petitioner filed two complaints before the Chief Judicial Magistrate, Bharuch, Gujarat on 21.06.1996.

It is clear that this complaints were filed within the prescribed period of one month. However, they were filed before the Chief Judicial Magistrate

at Bharuch in Gujarat. An objection with regard to territorial jurisdiction was taken and on 07.04.1998 the complaints were returned on the ground

of lack of territorial jurisdiction by the CJM, Bharuch, Gujarat. It was, in fact, ordered that the complaints be returned to the complainant for filing

before an appropriate court. As per the learned Counsel for the petitioner, the files along with translated copies from Gujarati to English were

returned to the petitioner by the said court on 25.06.1998. Immediately, thereafter, on 06.07.1998, the petitioner presented the complaints in the

court of the Chief Judicial Magistrate, Tis Hazari Court, Delhi. Thereafter, the petitioner led pre- summoning evidence which culminated in the

issuance of summons by the court. However, on 24.04.2001, i.e, after about 3 years, the respondents filed an application for recalling of the

summoning order and dismissal of the complaints on the ground of limitation. The learned Counsel for the petitioner submits that at that point of

time the decision of the Supreme Court in Adalat Prasad Vs. Rooplal Jindal and Others, had not been rendered and as such the court below

entertained the application for recall of the summoning order. By virtue of the impugned order dated 20.03.2003, the summoning order was

recalled and the complaints were dismissed on the ground that the complaints ought to have been presented in the courts at Delhi within 18 days

from 07.04.1998, i.e, on the date on which the court at Bharuch, Gujarat, had directed the return of the complaints for filing before an appropriate

court.

4. The learned Counsel for the petitioner submitted that the court below had granted the benefit u/s 470 Cr.P.C but had fallen into error in

computing the starting date from which the clock was to run. He submitted that 18 days ought not to have been calculated from 07.04.1998 but

from 25.06.1998 when the complaints were actually returned to the petitioner. He submits that in case 25.06.1998 is taken as the starting point,

then the complaints which were filed in Delhi on 06.07.1998, would be within the period of 18 days permitted by the court below. Therefore,

according to the petitioner, there was no delay and the complaints ought not to have been thrown out on the ground of limitation.

5. Apart from this, the learned Counsel for the petitioner also submitted that the provisions of Section 473 Cr.P.C ought to have also been kept in

mind before the impugned order was passed. In fact, Section 473 Cr.P.C provides for extension of period of limitation and enables the court to

take cognizance of an offence even after the expiry of the period of limitation, if it is satisfied on the facts and circumstances of the case that the

delay has been properly explained or that it is necessary to do so in the interest of justice. It is well settled that Section 473 Cr.P.C can be invoked

in cases where the delay has been properly explained or where it is necessary to do so in the interest of justice. It is clear that even where delay is

not properly explained but if a court feels that the circumstances of the case require the extension of period of limitation in the interest of justice,

then, it would be open for the court to do so.

6. I have heard the learned Counsel for the petitioner as well as the learned Counsel for the respondent and I find that the present case is one

where the complaints ought not to have been thrown out on the ground of limitation. First of all, in my view, there is sufficient Explanation for the

delay in filing of the complaints before the courts at Delhi. Secondly, the matter had proceeded beyond summoning and the order of recall ought

not to have been passed as there is no power of review granted to the courts below. Thirdly, I am of the view that it is a case where it would be in

the interest of justice to continue with the proceedings pursuant to the complaint and it is not one of those cases where the extension of the period

of limitation ought not to be granted. Fourthly, the extension of time also ought to have been granted u/s 142 of the Negotiable Instruments Act,

1881.

7. Accordingly, the impugned order is set aside. The complaints are restored. The matters now be placed before the ACMM, Tis Hazari Courts,

Delhi for assignment and further proceedings.