

(2007) 04 DEL CK 0201
In the Delhi High Court
Case No : Criminal Rev. P. 208 of 2007

ICICI Bank Ltd.

APPELLANT

Vs

Prafull Chandra

RESPONDENT

Date of Decision : 04-04-2007

Acts Referred:

General Clauses Act, 1897 — Section 27

Negotiable Instruments Act, 1881 (NI) — Section 138, 141, 142

Citation : (2007) 3 CivCC 532 : (2007) 139 DLT 538 : (2007) 2 ILR Delhi 250 :
(2007) 4 RCR(Civil) 228 : (2007) 4 RCR(Criminal) 203

Hon'ble Judges : S. Ravindra Bhat, J

Bench : Single Bench

Advocate : S.C. Bhalla and Puneet Bhalla, for the Appellant;

Final Decision : Disposed Off

Judgement

S. Ravindra Bhat, J.—In all these cases identical orders made by the learned Metropolitan Magistrate on 30.3.2007 dismissing the complaints preferred, have been impugned. The petitions involve identical questions of fact and law. Since the complaints were dismissed without further proceeding, on the first date of hearing, by the trial court, these revision petitions are being disposed off finally at the admission stage.

2. The impugned order reads as follows:

Heard : The perusal of the averments made in the complaint of the complainant is beyond statutory period and the same has already been observed by Ld. ACCM. More over no application for condensation of delay has been filed. Therefore, the case is hereby dismissed.

File be consigned to record room.

3. The complaints in all the proceedings filed by the common petitioner-Bank were identically phrased; they alleged commission of offences u/s 138/141 of Negotiable Instruments Act. It was alleged that the cheques in question were

dishonoured upon presentation; as a consequence legal notices u/s 138(b) of the Act were issued on 15.12.2006. Since the notices went unheeded and according to the complainant the accused did not comply with their terms and pay the amounts, the complaints were filed.

4. Learned Counsel contended that the Magistrate fell into error in concluding that the complaints were filed beyond the statutory period. It was submitted that the Magistrate was unduly influenced by the observations of the Additional Chief Metropolitan Magistrate, who appears to have made a noting to such an effect while marking the cases to the trial court.

5. Counsel submitted that the notices in that sense were issued on 15.12.2006 and in terms of Section 27 of the General Clauses Act, 1897 (hereafter "the 1897 Act") service would be deemed to be completed in the ordinary course at least one week after their issuance. Counsel contended that neither the undelivered letters nor A.D. cards were received by the complainants.

6. Learned Counsel for the petitioner relied upon the decision of the Supreme Court in *Dalmia Cement (Bharat) Ltd. v. Galazy Traders and Agencies Ltd. and Ors.* 2001 DCR 198. It was contended that the court had taken note of Section 27 of the 1897 Act and observed that the sender of notice enjoys benefit of a presumption. Counsel contended that in these circumstances the filing of the complaints on the 48th day after the issuance of the legal notice could not be construed as beyond the time prescribed as it would lead to an obvious anomaly, i.e. time being reckoned from the date of the notice.

7. Section 138, to the extent it is material is extracted below:

138. Dishonour of cheque for insufficiency, etc., of funds in the account - Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for [a term which may be extended to two years], or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless-

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(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.

8. The pre-conditions for filing a valid complaint which can be entertained are as follows

- 1) Receipt by the payee about dishonour of the instrument from the drawer's banker;
- 2) Issuance of legal notice within 30 days of receipt of such information;
- 3) Filing of a complaint within 15 days of receipt of the notice, by the drawer.

9. The object behind enacting these pre-conditions was to ensure that drawers of the instrument are afforded opportunity to make good the payment, after being called upon to do so. At the same time however Parliamentary intention was clear; once notice is issued in a given case, the payee has to necessarily, in order to avail of the summary procedure, approach the court within the stipulated period.

10. The notices here were dispatched on 15.12.2006. The trial court appears to have proceeded on a footing that the 45 days period i.e. the 30 days for the legal notice and further period of 15 days for the filing of the complaint, commenced from the date of the issuance of the legal notice. This in my opinion was not only fallacy, but a palpable error. In this context it will be useful to extract the observations of the Supreme Court in K. Bhaskaran Vs. Sankaran Vaidhyan Balan and Another,

If a strict interpretation is given that the drawer should have actually received the notice for the period of 15 days to start running no matter that the payee sent the notice on the correct address, a trickster cheque drawer would get the premium to avoid receiving the notice by different strategies and he could escape from the legal consequences of Section 138 of the Act. It must be borne in mind that the court should not adopt as interpretation which helps a dishonest evader and clips an honest payee as that would defeat the very legislative measure.

11. Section 27 which was noticed by the Supreme Court reads as follows:

27. Meaning of service by post :Where any Central Act or Regulation made after the commencement of this Act authorises or requires any document to be served by post, whether the expression "serve" or either of the expression "give" or "send" or any other expression is used, then, unless a different intention appears, the service shall be deemed to be effected by properly addressing, prepaying and posting by registered post, a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post.

12. In these cases the trial court has given no allowance for service of the notice and the time which would ordinarily have been taken, for the purpose. The key expression in Section 27, which was held applicable by the Supreme Court (in

cases arising out of complaints alleging commission of offences u/s 138 of the Act) are that the notice would be deemed to have been effected at the time when the letter would be delivered in the "ordinary course of post". This aspect has escaped the attention of the court which reckoned time from the date when the legal notice was issued giving no allowance for the presumption to operate. I am of the opinion that the benefit of at least a week is admissible in this regard. So reckoned; the limitation in this case would have expired on 5.2.2007 and the bar u/s 142 would have operated thereafter. However, the complaints were filed within that time, on 2.2.2007, and Therefore could not have been rejected on that ground.

13. For the above reasons, the impugned orders cannot be sustained. They are hereby set aside. The matter is remitted to the trial court for further proceedings in accordance with law. The petitioner shall appear before the trial court for further proceedings/directions on 24.4.2007. Order dusty.