(2011) 09 DEL CK 0092

In the Delhi High Court

Case No : Criminal M.C. 3032 of 2004

Jyoti Build Tech Pvt. Ltd. and Others APPELLANT

Vs

Mideast Pipeline Products RESPONDENT

Date of Decision : 26-09-2011

Acts Referred:
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2011) 183 DLT 680

Hon'ble Judges : Pradeep Nandrajog, J

Bench : Single Bench

Advocate : D.K. Rustagi and B.S. Bagga, for the Appellant; Manu Beri, for the Respondent

Judgement

Pradeep Nandrajog, J.—The Respondent filed a complaint u/s 138 of the Negotiable Instruments Act 1881, in which Petitioners were impeded as accused No. 1 to accused No. 5. Accused No. 1 is a company registered under the Companies Act. Other accused were stated to be the Directors of accused No. 1 and qua them it has been pleaded in the complaint that they are responsible to the company for the conduct of the business of the company and are in charge of the affairs of the company.

2. Pertaining to the cheque in question, in the sum of Rs. 4.29 lacs, dated 3.9.2003, drawn on Indian Overseas Bank, Arun Vihar, Noida, U.P., it is asserted in the complaint, in para 5 thereof, as under:

That with respect to the installation of 700 mm dia M.S. Pipes, the Accused persons initially identified two crossings, totaling a length of approximately 130 mtr., where the 700 mm dia M.S. Pipes to be supplied by the Accused persons were to be installed. Accordingly, the Accused No. 1, in presence of the other accused persons, told the Complainant that a sum of Rs. 4.29 lakhs shall be paid as advance and shall be adjustable to the final value of the work carried out.

3. Preceding paragraph No. 5, it is stated in paragraph No. 3 of the complaint,

that on 18.7.2003 an agreement was entered into between the complainant and accused No. 1 for laying 700 mm dia M.S. pipes under roads at Noida @ Rs. 11,000/- per running meter, for which pipes had to be supplied by the accused i.e. the complainant was to only lay down the pipes. In para 4 it is stated that under the same agreement, the complainant was required to install 600 dia mm M.S. pipes @ Rs. 9,500/- per running meter and that as desired by the accused, the complainant laid 184 meters of pipes and raised invoice in the sum of Rs. 17.48 lacs, out of which the complainant had received Rs. 17.25 lacs, leaving behind a balance of Rs. 23,000/-.

4. Thereafter, averments have been made in para 5 of the complaint, as noted above, pertaining to identification of two crossings having length segments of 130 meters where-under 700 mm dia M.S. pipes were to be laid and for which the complainant received Rs. 4.29 lacs as advance, to be adjusted in the final work done.

5. It is apparent that as pleaded in the complaint, the complainant itself has rebutted the presumption of a cheque being drawn for consideration. The complainant itself has admitted that the cheque was not drawn for any consideration but was drawn towards advance payment and adjustable on the final value of work carried out.

6. In para 6 of the complaint it is stated that as against 700 mm dia M.S. pipes, the accused supplied to the complainant 750 mm dia M.S. pipes and that the complainant installed the same without demanding higher amount and that when the cheque was presented, it was returned with the remarks that ''the payment was stopped by the drawer''.

7. Along with the complaint, the notice sent by the complainant, as envisaged by Section 138 of Negotiable Instruments Act 1881, as also the reply thereto, was annexed. The two would show that there is a serious dispute between the parties with respect to the work performed by the complainant.

8. What I wish to highlight is that the said correspondence shows a business related dispute. The complaint filed by the complainant itself evidences that the cheque was not issued for any consideration on the date when the cheque was drawn. The cheque was expressed issued as advance payment. That the cheque was presented for encashment on 23.9.2003, as pleaded in para 10 of the complaint, is proof furnished by the Petitioner that notwithstanding the cheque being dated 23.9.2003 it was not presented for encashment for 20 days, for the obvious reason, on the date when the cheque was issued it was sans a valuable consideration. It was towards advance payment.

9. It is not in dispute that the complainant had sufficient funds in the account when the cheque was presented to the drawer bank and returned under the instructions the payment was stopped by the drawer.

10. The presumption that the cheque was for consideration has itself been

rebutted by the complainant by making a truthful disclosure in the complaint, but unfortunately for the complainant this statement of truthfulness would be akin to a self goal. I repeat. The averments in para 5 of the complaint evidenced that the cheque was not for a valuable consideration when it was drawn. It was towards advance payment for work yet to be done and would have acquired a consideration only then.

11. Under the circumstances, it is apparent that the learned Metropolitan Magistrate who has taken cognizance of the complaint and summoned the accused has not applied himself correctly. It has been ignored by the learned Metropolitan Magistrate that it is not a case of a cheque being dishonored for lack of sufficient funds. It is not a case where the instruction to the banker to stop payment was a ruse to get over insufficiency of funds in the account. The statutory notice served and its response, which was before the learned Metropolitan Magistrate, has obviously not been perused by the learned Metropolitan Magistrate. If perused, the same would have revealed a business dispute of a serious nature between the parties. That the cheque was dated 3.9.2003 but was presented for encashment on 23.9.2003 also reinforces the pleading in the complaint that the cheque was not for consideration on the date it was drawn. It was towards advance payment for the work yet to be done.

12. I lodge a caveat. A post dated cheque for a debt due but payable in future would have to be dealt with on different principles inasmuch as when the said cheque is drawn towards repayment, it is drawn towards a debt which is due, but payable in future. On the future date when the payment becomes payable, the twin requirement of the instrument being towards a debt due and payable would stands satisfied. Such cheque if returned by the banker on whom it is drawn upon the instruction ''payment stopped by the drawer'' would require a consideration by the learned Metropolitan Magistrate on the subject whether the same was a ruse to overcome deficiency of funds in the accounts.

13. Disposing of the petition, I quash the order dated 5.12.2003 summoning the accused. I quash the complaint and leave it open to the parties to resolve their dispute at a civil forum.

14. No costs.