(2022) 01 DEL CK 0217

In the Delhi High Court

Case No : Criminal Miscellaneous Case No. 2438, 2445, 2446 Of 2021, Criminal Miscellaneous Application No. 16048, 16082, 16083, 16084, 16085 Of 2021

M/S Rayapati Power Generation Pvt. Ltd. And Anr — APPELLANT

Vs

Indian Renewable Energy Agency Ltd (IREDA) — RESPONDENT

Date of Decision : 31-01-2022

Acts Referred:

Code Of Criminal Procedure, 1973 — Section 482
Negotiable Instruments Act, 1881 — Section 138, 138(a), 138(b), 138(c), 141, 142, 142(b)
General Clauses Act, 1897 — Section 9

Citation : (2022) 01 DEL CK 0217

Hon'ble Judges : Manoj Kumar Ohri, J

Bench : Single Bench

Advocate : Dhruv Dwivedi, Sheikh Bakhtiyar

Final Decision : Dismissed

Judgement

Criminal

Complaint No.",Date of Cheque,"Date of Return

Memo","Date of receipt of

Return Statement","Date of posting of

Legal Notice

20581/2016,31.03.2015,29.05.2015,19.06.2015,07.07.2015

15489/2016,30.09.2015,19.10.2015,29.10.2015,28.11.2015

941/2017,30.06.2016,21.07.2016,27.07.2016,26.08.2016

giving a notice â??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 unpaidâ?. So fifteen days are to be counted from the receipt of information regarding the return of the cheque as unpaid.,,,,

In the present case, it is the say of the complainant that the cheque was presented for encashment on 12th; it was returned to the Bank on",,,,

13th and information was given to the complainant only on 17th, as 14th, 15th and 16th were Pongal holidays. The learned counsel fairly",,,,

pointed out that in the complaint it has been stated that the complainant had received intimation with regard to the return of the said cheque,,,,

from his banker on 13-1-1994. However, he submitted that this is an apparent mistake and for explaining that mistake the appellant has led",,,,

the evidence before the trial court. Undisputedly, he pointed out that in the State of Tamil Nadu, 14-1-1994 to 16-1-1994 there were Pongal",,,,

holidays and, therefore, the appellant came to learn about the dishonour of his cheque on 17-1-1994.â??",,,,

13. Note is also taken of the decision in N. Parameswaran Unni v. G. Kannan and Another reported as (2017) 5 SCC 737, where while commenting",,,,

on Section 138(b) N.I. Act, as it stood prior to the amendment in 2002, the Supreme Court has opined thus:-",,,,

â??11. A bare reading of Section 138 of the NI Act indicates that the purport of Section 138 is to prevent and punish the dishonest drawers,,,,

of cheques who evade and avoid their liability. As explained in clause (b) of the proviso, the payee or the holder of the cheque in due",,,,

course is necessarily required to serve a written notice on the drawer of the cheque within fifteen days from the date of intimation received,,,,

from the bank about dishonour.â??,,,,

(emphasis added),,,,

14. To appreciate whether or not the day on which information regarding dishonor of cheque is received by the complainant is to be included in,,,,

calculation of limitation period under Section 138(b) N.I. Act, it is deemed expedient to allude to the decision rendered in Econ Antri Limited v. Rom",,,,

Industries Limited and Another reported as (2014) 11 SCC 769, where a three-Judge Bench of the Supreme Court, while answering a reference,",,,,

rejected the contention that use of two different words in Section 138 N.I. Act, i.e. â??fromâ?? and â??ofâ??, is indicative of different meanings",,,,

and resolved the conflict arising from discordant views taken in Saketh India Ltd.

and Others v. India Securities Ltd. reported as (1999) 3 SCC 1 and,,,,

SIL Import, USA v. Exim Aides Silk Exporters, Bangalore reported as (1999) 4 SCC 567 in the following terms:-",,,,

â??26. We have extensively referred to Saketh. The reasoning of this Court in Saketh based on the above English decisions and decision of,,,,

this Court in Haru Das Gupta which aptly lay down and explain the principle that where a particular time is given from a certain date,,,,

within which an act has to be done, the day of the date is to be excluded, commends itself to us as against the reasoning of this Court in SIL",,,,

Import, USA where there is no reference to the said decisions.",,,,

xxx,,,,

28. The counsel, however, submitted that using two different words â??fromâ? and â??ofâ? in Section 138 at different places clarifies the",,,,

intention of the legislature to convey different meanings by the said words. He submitted that the word â??ofâ? occurring in Sections,,,,

138(c) and 142(b) of the NI Act is to be interpreted differently as against the word â??fromâ? occurring in Section 138(a) of the NI Act.,,,,

The word â??fromâ? may be taken as implying exclusion of the date in question and that may well be governed by the General Clauses Act,",,,,

1897. However, the word â??ofâ? is different and needs to be interpreted to include the starting day of the commencement of the",,,,

prescribed period. It is not governed by Section 9 of the General Clauses Act, 1897. Thus, according to the learned counsel, for the",,,,

purposes of Section 142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises,",,,,

the starting date on which the cause of action arises should be included for computing the period of 30 days.,,,,

29. We are not impressed by his submissionâ?¦,,,,

xxx,,,,

34. As the Limitation Act is held to be not applicable to NI Act, drawing parallel from Tarun Prasad Chatterjee where the Limitation Act was",,,,

held not applicable, we are of the opinion that with the aid of Section 9 of the General Clauses Act, 1897 it can be safely concluded in the",,,,

present case that while calculating the period of one month which is prescribed under Section 142(b) of the NI Act, the period has to be",,,, reckoned by excluding the date on which the cause of action arose. It is not possible to agree with the counsel for the respondents that the,,,,

use of the two different words â??fromâ? and â??ofâ? in Section 138 at different places indicates the intention of the legislature to convey,,,,

different meanings by the said words.,,,,

xxx,,,,

39. In view of the above, it is not possible to hold that the word â??ofâ? occurring in Section 138(c) and 142(b) of the NI Act is to be",,,,

interpreted differently as against the word â??fromâ? occurring in Section 138(a) of the NI Act; and that for the purposes of Section,,,,

142(b), which prescribes that the complaint is to be filed within 30 days of the date on which the cause of action arises, the starting day on",,,,

which the cause of action arises should be included for computing the period of 30 days. As held in Fallon, ex p the words â??ofâ?,",,,,

â??fromâ? and â??afterâ? may, in a given case, mean really the same thing. As stated in Stroudâ??s Judicial Dictionary, Vol. 3, 1953",,,,

Edn., Note (5), the word â??ofâ?? is sometimes equivalent of â??afterâ??.",,,,

xxx,,,,

42. Having considered the question of law involved in this case in proper perspective, in the light of relevant judgments, we are of the",,,,

opinion that Saketh lays down the correct proposition of law. We hold that for the purpose of calculating the period of one month, which is",,,,

prescribed under Section 142(b) of the NI Act, the period has to be reckoned by excluding the date on which the cause of action arose. We",,,,

hold that SIL Import, USA does not lay down the correct law. Needless to say that any decision of this Court which takes a view contrary to",,,,

the view taken in Saketh by this Court, which is confirmed by us, do not lay down the correct law on the question involved in this reference.",,,,

The reference is answered accordingly.â??,,,,

(emphasis added),,,,

15. The view taken in Econ Antri (Supra) has been reiterated and applied by the Supreme Court in Rameshchandra Ambalal Joshi v. State of Gujarat,,,,

and Another reported as (2014) 11 SCC 759.,,,,

16. Recently, a Co-ordinate Bench of this Court in Simranpal Singh Suri v. State

and Another reported as 2021 SCC OnLine Del 236 also discussed",,,,

the issue of limitation at length and relied upon the decision in Econ Antri (Supra) to decide the issues arising under Sections 138/142 N.I. Act.,,,,

17. In view of Econ Antri (Supra), a decision albeit rendered in relation to Section 138(c) and Section 142(b) N.I. Act, it is discernible that the words",,,,

â??ofâ?? and â??fromâ?? used under Section 138 N.I. Act do not imply different meanings. It is safe to infer that the use of the word â??ofâ?? in,,,,

Section 138(b) N.I. Act does not imply either that the day on which information regarding dishonor of cheque is received by the complainant from the,,,,

bank is to be included while computing the limitation period for issuance of a valid legal notice.,,,,

Â The legal position, as culled out from the judicial dicta referred to hereinabove, is that while computing the limitation period of 30 days prescribed",,,,

under Section 138(b) N.I. Act for issuance of a valid legal notice, the day on which intimation is received by the complainant from the bank that the",,,,

cheque in question has been returned unpaid has to be excluded.,,,,

18. Applying the law to the facts of the present case, it is noted that the petitioner relies on the dates of return memos, i.e., dates of return of cheques",,,,

in question, to compute the period of 30 days prescribed in the statute and contends that the legal demands notices were not issued in time. To the",,,,

contrary, the complainant relies on the dates of receipt of return statements from its Bank, i.e., the dates on which intimation was received regarding",,,,

dishonor of the cheques in question, to submit that the legal demand notices were issued within the statutory period.",,,,

19. Considering the decision in Munoth Investments (Supra) where the Supreme Court took into account the date of receipt of debt advice by the,,,,

complainant to decide the issue of limitation instead of the date of return of the cheques in question, the ratio of the decision in Econ Antri (Supra) and",,,,

the material placed on record in the present case to indicate that the information regarding dishonor of the cheques in question came to the notice of,,,,

the complainant Company vide the return statements, this Court is of the prima facie opinion that the legal notices were posted by the complainant",,,,

Company within 30 days of the receipt of information from its Bank regarding dishonor of the cheques in question and were not time-barred. The,,,,

contentions raised on behalf of the petitioner do not weigh with this Court and are accordingly rejected. However, at the same time, the defence that",,,,

the complainant Company obtained knowledge of the dishonor of the cheques in question prior to the receipt of return statements from its Bank,,,,

remains available to the petitioners but the same being a question of fact shall be a matter of trial.,,,,

20. Accordingly, the petitions are dismissed. Miscellaneous applications are disposed of as infructuous.",,,,