

(2006) 09 DEL CK 0200

In the Delhi High Court

Case No : Criminal M.C. No. 2912 of 2004 and Criminal M.A. No. 9858 of 2004

Puri International (P) Ltd. and Another

APPELLANT

Vs

Ram Lal Bansiwali and Sons

RESPONDENT

Date of Decision : 13-09-2006

Acts Referred:

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

Citation : (2007) 1 BC 126

Hon'ble Judges : A.K. Sikri, J

Bench : Single Bench

Advocate : A.K. Verma, for the Appellant; Anjali Chopra, for the Respondent

Final Decision : Allowed

Judgement

A.K. Sikri, J.—Respondent has filed a complaint u/s 138 of the Negotiable Instruments Act on the basis of a dishonoured cheque dated 20.3.2002 which was for a sum of Rs. 50,000/- drawn on Indian Overseas Bank. In the complaint filed by the complainant, it is alleged that when the cheque was dishonoured, a legal notice dated 31.5.2002 was sent by the Registered AD/UPC by the complainant through their Counsel to the accused persons/petitioners herein, calling upon them to make payment within 15 days after receipt of this notice. The petitioners herein after receiving the summons in the said case moved application for their discharge which has been dismissed by the learned M.M. and the present petition is filed challenging the summoning order/quashing of the complaint.

2. The contention of the learned Counsel for the petitioner is that after the dishonour of the cheque, respondent had served notice dated 29.4.2002 intimating about the dishonour of the said cheque and calling upon the petitioner to "release the payment by cash or demand draft as early as possible". It is the submission of the learned Counsel for the petitioner that this was the first notice of the dishonour of the cheque and complaint was to be filed within one month after expiry of 15 days of the receipt of this notice as that would have been the

restarting of the cause of action. The factum of the aforesaid notice given is not disclosed in the complaint and the complaint is based on subsequent notice dated 31.5.2002 which is not permissible in law.

3. Countering this submission of the learned Counsel for the petitioner, it is argued by the learned Counsel for the respondent that communication dated 29.4.2002 which was sent by the complainant himself would not be treated as notice within the meaning of Section 138(c) of the Negotiable Instruments Act as it was specifically stated therein that the petitioner should made payment within 15 days of the receipt of the said notice and it is because of this reason that subsequently notice dated 31.5.2002 was sent on the basis of which complaint has been filed. The question for determination is to whether earlier notice dated 29.4.2002 would be treated as notice for the purposes of Section 138(c) of the Negotiable Instruments Act which stipulates service of notice which is as under:

138(c). The drawer of such cheque fails to make the payment of the said amount of money to the payee or as the case may be, to the holder in due course of the cheque within fifteen days of the receipt of the said notice.

4. It is not stated anywhere in this clause that notice of 15 days is to be given to the drawer. As per this provision what is required that intimation of dishonour of the cheque be given to the drawer of the cheque and the payee or the holder in due course of the cheque becomes entitled to file the complaint in case drawer of the cheque fails to make payment within 15 days of the receipt of this notice. Thus from the date of receipt of the notice, period of 15 days is allowed to the drawer of the cheque to make payment. There is no such requirement that this period of 15 days has to be stipulated in the notice.

5. In *Uniplas India Ltd. and Ors. v. State and Anr.* 1999(2) JCC (Delhi) 418. Single Judge of this Court categorically held that notice need not specifically stipulate that payment be made within 15 (fifteen) days and rather Clause (c) of the proviso to Section 138 just casts a statutory duty on the drawer of such cheque to pay the amount within 15 days of the receipt of such notice which gives cause u/s 142(b) of the Act. Relevant discussion can be found in para 18 which is to the following effect:

18. As regards the second contention contention that it was not intended to be a notice u/s 138(b) for, this letter did not contain any warning relating to any legal action, it may be just stated that by referring to Law Lexicon, we cannot import and introduce the words and phrases which are not there in Clause (b) of Section 138 of the Act. The Clause (b) does neither require notice of demand should be sent through Counsel nor does it require that it should be stated that the payment should be made within 15 days from the receipt of the notice, failing which legal action shall be taken. This appears to be the basic reason in *German Remedies Ltd. v. Harish C. Duggal Agencies* 1997(1) Crimes 421 that a business letter demanding payment within 11 days was accepted to be a legal notice. No doubt, notwithstanding that generally such a threat or warning is given in the

notices drafted by Counsel it is not required in law to mention that the respondent must pay the amount within 15 days, failing which the complaint would be filed for offence u/s 138. Clause (c) of the proviso to Section 138 just casts a statutory duty on the drawer of such cheque to pay the amount within 15 days of the receipt of such notice to give a cause of action u/s 142(b) of the Act. The Negotiable Instruments Act relates to usual commercial business transactions relating to promissory notes, notes, bills of exchange and cheques. Therefore, Clause (b) of the proviso to Section 138 has to be read in a business like manner without introducing any pedantic approach. Consequently, the contention of the learned Counsel for respondent No. 2 that in the absence of any warning, there was no demand notice within Clause (b) of Section 138, has to be rejected and it is rejected accordingly.

6. Recently this view is also taken by this Court as well as various other High Courts repeatedly. In *Pramod Vijay Khullar v. State and Anr.* 2005 (1) JCC (NI) 97, identical issue came before the Court and analysing the provisions of Section 138 of the NIA, the Court held as under:

8. The three pre-conditions for application of the section are

(a) The cheque has to be presented within the period of validity.

(b) The demand is made for payment of the said amount of money by a notice in writing.

(c) The drawer fails to make the payment within 15 days of the receipt of the notice.

9. The statute does not say that the notice of demand should specify the period within which the payment is to be made. It only specifies that if the payment is made within 15 days of the notice and offence u/s 138 of the Act would not be committed. Reference can be made to *Hammanna S. Nayak v. Vijay Kumar Kalani and Anr.* 2000 Cr.LJ 4438 (Bombay High Court), *K. Murlidhar Rao v. State of Andhra Pradesh and Anr.* 1998 Cr.LJ. 748 (Andhra Pradesh High Court). Thus the third objection raised has no merit.

7. Similar view is taken by Karnataka High Court in *V.N. Samant v. K.G.N. Traders and Anr.* 1994 Criminal Law Journal 3115, Andhra Pradesh High Court in *K. Muralidhar Rao v. State of Andhra Pradesh and Anr.* I(1998) BC 290 : I (1998) CCR 80 : 1998 Cr. LJ 748, Rajasthan High Court in *Satyavan Chaplot v. Rajendra* 1998 Cr. LJ 2309 and Bombay High Court in *Hammanna S. Nayak v. Vijay Kumar Kalani and Anr.* II(2000) BC 625 : 2000 Cr. LJ 4438.

8. I may point out that the learned Counsel for the respondent has placed reliance on the judgment of a Single Judge of this Court *Padmini Polymers Ltd. Vs. Unit Trust of India*, wherein such demand was not treated proper notice u/s 138(c) of the Negotiable Instruments Act and it was observed:

So far as the letter dated 5.7.2001 which is being used as sheet-anchor by the

petitioners is concerned it cannot by any stretch of imagination be termed as notice served upon the respondents as contemplated u/s 138 of the Act. Simply because a reference was given for initiating proceedings u/s 138 of the Act does not give a colour of notice as contemplated u/s 138 of the Act. Through this letter, only the fact that the cheques have been dishonoured was brought to the notice of the petitioners calling upon them to make the payment immediately of the outstanding dues. It was not a legal notice whereby the petitioners were called upon to make the payment within 15 days of the receipt of said notice as contemplated under Sub-clause (c) of Section 138 of the Act.

9. I am afraid that the aforesaid observations go contrary to the consistent view taken by this Court as well as other High Courts as mentioned in the judgments already quoted above and, Therefore, aforesaid observations are per incuriam.

10. It is thus clear that first notice dated 29.4.2002 was also a valid notice and Therefore limitation has to be counted from the said notice. When the period of limitation is to be reckoned from the service of notice dated 29.4.2002, the complaint filed by the respondent herein is clearly time-barred. The complainant cannot be permitted to give second notice as was done in this case by serving notice dated 31.5.2002 and filed the complaint on that basis. The summoning order is, Therefore, bad in law and is set aside. Consequently the complaint is also dismissed. This petition is allowed.