

(2018) 03 DEL CK 0165
In the Delhi High Court
Case No : CRL.M.C. 1494 Of 2018

Ram Kavar Huf

APPELLANT

Vs

M/S Smc Global Securities Ltd

RESPONDENT

Date of Decision : 23-03-2018

Acts Referred:

Negotiable Instrument Act, 1881 — Section 138

Citation : (2018) 03 DEL CK 0165

Hon'ble Judges : SANEEV SACHDEVA

Bench : Single Bench

Advocate : Mr. Prince Jain

Final Decision : Disposed Of

Judgement

Crl.M.A.5425/2018 (exemption)

Exemption is allowed subject to all just exceptions.

CRL.M.C. 1494/2018 & Crl.M.A.5426/2018 (stay)

1.Issue notice. Notice is accepted by the learned counsel appearing for the respondent. With the consent of the parties, the matter is taken up for

hearing today.

2.The petitioner impugns order dated 14.12.2017, whereby, the Revisional Court has allowed the revision petition filed by the petitioner subject to certain conditions.

3.The petitioner is an accused in a case filed by the respondent under Section 138 of Negotiable Instrument Act, 1881. The petitioner impugned order

dated 27.07.2017 of the Trial Court closing the right of the petitioner to cross-examine the witnesses of the respondent.

4.The Trial Court was of the view that the petitioner had been given sufficient

time to cross-examine the witnesses, however, the petitioner was delaying the proceedings. The petitioner was insisting on production of the records prior to the continuance with the cross-examination. The Trial Court was of the view that the petitioner was trying to deliberately create difficulties for the Court to prevent conclusion of evidence. The Court was of the view that the witness could only be put relevant questions and could not be compelled to produce any document.

5. The Revisional Court, by the impugned order, granted one more opportunity to the petitioner to conduct cross-examination of the complainant's

witnesses subject to the condition that the petitioner pays cost of Rs.7,000/-. The Revisional Court allowed the revision petition, filed by the petitioner, subject to the following conditions:

(i) The cost as mentioned above shall be paid to the respondent herein before the start of the cross-examination of any witnesses, failing which no right of cross-examination of CW1 shall be granted to him.

(ii) CW1 shall be present for his cross-examination, thereafter, on the date so fixed by the Ld. Trial Court subject to its convenience and on the date so fixed for cross-examination of CW1, the petitioner shall conclude cross-examination on that day itself and shall not seek any adjournment. Further no adjournment shall be sought on one ground or the other and Ld. Trial court shall be at liberty to proceed ahead as per law.

(iii) Before the start of the cross-examination of CW1, petitioner shall prepare all the possible questions for cross-examination of CW1 in writing and before the start of the cross-examination, it shall be considered by Ld. Trial Court and Ld. Trial Court shall be at liberty to decide the relevancy of the proposed questions which are to be put to CW1. If, Ld. Trial Court opines that any of the proposed question is not relevant, then petitioner shall be having liberty to record his objections for the same and after recording the same, Ld. Trial Court may proceed ahead accordingly as per rules and procedures.

(iv) Petitioner shall be having liberty to place on record documents, however, such document should be relevant subject to the merit of the case and such relevancy shall be subject to the decision of the Trial as the case may be.

6. The Trial Court, by its order dated 27.07.2017, noted as under:-

Perusal of the record shows that witness of the complainant has been cross-examined at length on three dates by the accused himself. The accused is at full liberty to ask about the arbitration record but he cannot compel the witness to produce the record if witness himself does not want to produce the same. The court, in such scenario, has directed the accused to continue with the cross-examination ask for production of arbitration record, if required which may be allowed by the court, if they are relevant for disposal of this case. However, the accused insists on the production of records. He first said that he will continue with cross examination. It appears that accused is deliberately creating difficulty for the court to prevent conclusion of evidence in this matter. The witness can be put forth any relevant question however, he cannot be compelled to produce any documents. It is settled principle of law that if any party is obligated as per law to produce any document, and he deliberately withholds it, then the court may always draw an adverse inference against him. Despite direction by the court to continue the cross-examination, the accused has refused to further cross-examine the witness. The court is not inclined to indulge the accused any further, who is deliberately prolonging this matter. Previously, also applications for similar kind of prayer had been moved by the accused, which the court had to decide vide its detailed order dated 24.04.2017. The court is not inclined to give any further opportunity to the accused. Hence, right of the accused to further cross-examination of complainant witness Mr. Manoj Kumar is hereby closed.

It is submitted that there is another witness to produced by the complainant. Evidence of witness Laxman Kumar is recorded as CW2. Cross-examination of CW2 deferred on request.

Matter be adjourned for RCE as last opportunity on 22.09.2017.

7. The Revisional Court, by the impugned order dated 14.12.2017, directed as under:-

9. Thus, with these submissions of respondent, the plea raised by the petitioner's case by itself that he may be allowed to bring on record the entire arbitral record and the concerned witness be summoned, accordingly, is not tenable in the eyes of law. Petitioner, as per law is having liberty to place on record the photocopy of the same for which respondent has stated that he is

not going to dispute the authenticity of the photocopies of these documents. Such recourse was available with the petitioner since the very beginning, however, has not been pressed by him before the Ld. Trial Court. It is a matter of record that petitioner has been pursuing and arguing the present matter in person and claims himself to be having knowledge of law. Thus, he cannot be presumed to be ignorant of the procedures. More so, ignorance of law is no excuse. Thus, in such circumstances the conduct of the petitioner, to this extent, has also been pointed out by the Ld. Trial Court which is reflected in its order.

10. Above all, the main grievance of the petitioner is that this document as mentioned above should be brought on record and he should be allowed to cross examine CWI. The impugned order dated 27/07/2017 is perused vide which the conduct of the petitioner who is accused before the Ld. Trial

Court has been considered and keeping in mind the same, right to cross-examination of CWI has been closed. It is reflected that, though respondent has been pressing hardly for dismissal of the present petition, however, he has no objection if the court grants him opportunity for the same, however, that should be subject to very heavy cost.

11. It is needless to say that the endeavour of the court should be to decide the case on merits and not merely on the basis of the technicalities. The petitioner in the present case is arguing in person and he claims to be having knowledge of the law. Whatever the case may be, he should be equated with the counsel and presumed to be having knowledge of the entire procedure of law. So far as the submissions of the petitioner that he should be allowed to bring on record the arbitration proceedings by the Ld. Trial Court, I do not find any infirmity. In the impugned order to this extent as it has been rightly observed that such plea taken by the petitioner is nothing but his defence for which he would be having an opportunity at the time of his defence evidence.

12. Above all, whatever submissions made by the petitioner may be, they can only be allowed and considered subject to its relevancy according to the merit of the case. It should not be forgotten by the petitioner that these are the proceedings U/s 138 NI Act for which the scope of cross-examination of witnesses is limited only to the extent of issuance of cheque, its relevancy and circumstances relating to the issuance as well as giving of legal notice

and receiving the same.

13. Considering all the circumstances, I deem it appropriate that one opportunity only in the Interest of justice, may be granted to the petitioner for

which counsel for respondent has not objected to, however, it should be subject to imposition of cost. With these submissions, the entire record is

perused again and it is reflected that the conduct of the petitioner during the trial at one point or other, as pointed out by the Ld. Trial court, does not

seems to be appropriate, however, whether his conduct is right or wrong he should not be denied of his right of fair trial.â??

8. Further, when the matter was listed before the Trial Court after the impugned order of the Revisional Court dated 14.12.2017. The Trial Court

commenced the cross-examination of CW2.

9. The Trial Court, by its order dated 21.12.2017, noted as under:-

At this stage, it appears that repeated irrelevant questions are being asked by the accused, who is cross-examining the witness in person. It appears

that it will be appropriate if the accused engages the services of a counsel to represent him in the present matter. He has been apprised of the same.

He has also been apprised that in case, he was not in a position to engage a private counsel, he can approach DLSA (Central) for engaging a Legal

Aid counsel, if found eligible as per Rules.â??

10. Perusal of the orders of the Trial Court as well as the Revisional Court makes it clear that the petitioner, who is appearing in person, has been

repeating questions, which the Court has found to be irrelevant. The Court seems to be kept engaged for substantial periods of time in dealing with the

questions which the Court is of the view are irrelevant.

11. The other issue being raised by the petitioner is production of the arbitral record, which, as per the petitioner, is being relied on by the respondent.

12. Learned counsel for the respondent submits that the respondent is only relying on the arbitration award and is not relying on the arbitration

proceedings. He submits that whatever is sought to be relied on has been produced before the Court and, in case, the petitioner seeks to rely on any

other part of the arbitral proceedings, he has already been given an opportunity by the Trial Court to produce the same in his defence.

13. The petitioner has referred to his application dated 27.07.2017 filed before the Trial Court seeking production of the Arbitral Record.

14.Perusal of the said application shows that the application runs into 31 pages, wherein, the petitioner was seeking to summon the arbitral record for the purposes of confronting a witness with the same.

15.Keeping in view the facts and circumstances of the case and the arguments of the parties, I am of the view that the order of the Revisional Court, to some extent, calls for interference.

16.Insofar as the imposition of cost is concerned, since this is a discretionary power exercised by the Revisional Court, I am not inclined to interfere with the same. The petitioner would be liable to pay the cost in accordance with the order of the Revisional Court. Accordingly, the cost, imposed by the Revisional Court, be paid by the petitioner on the next date.

17.Insofar as the direction to the petitioner to conclude the cross-examination of CW1 on one date is concerned, in my view, the direction is onerous.

18.Keeping in view of the volume of the documents on which cross-examination has to be conducted, it may not be possible for the petitioner to conclude the cross-examination on one date. Further, exigencies of the Court and availability of time with the Court has to be kept in mind.

19.Accordingly, it is directed that in case the petitioner is not in a position to conclude his cross-examination on one date, for any valid reason, it would be in the discretion of the Trial Court to grant further time to the petitioner to continue his cross-examination of CW1.

20.With regard to the direction to the Petitioner to prepare his questions in advance, the petitioner shall comply with the said direction and prepare his broad questions pertaining to all the documents that he seeks to cross-examine on. However, the Trial Court would permit the petitioner to raise further questions which may arise depending upon the answers given by the witness and the circumstances so warranting.

21.On the next date, the Trial Court shall fix a date for cross-examination of CW1, giving reasonable time to the petitioner to prepare his questions in terms of the directions given by the Revisional Court.

22.Insofar as the production of documents is concerned, it is noticed that the Revisional Court has already given liberty to the petitioner to place on record the documents which may be relevant for the purposes of trial. In case, the petitioner requires to confront any witness with any document, which are not in his power or possession and which are required to be

summoned from a third party, it would be open to the petitioner to apply to the Trial Court for the said purpose.

23.It would also be open to the petitioner to seek assistance of a counsel. In case, he is not in a position to engage a counsel for financial reasons, he

would be at liberty to approach the Delhi State Legal Services Authority for providing him a Legal Aid Counsel, as permitted by the Trial Court by

order dated 21.12.2017. Legal Aid counsel be provided to the petitioner, in case, the petitioner satisfies the requirements of law.

24.The petition is disposed of in the above terms.

25.Order Dasti under the signatures of the Court Master.