(2013) 12 DEL CK 0045

In the Delhi High Court

Case No : Criminal M.C. 838 of 2013 and Criminal M.A. 2711 of 2013

Ravinder Singh and Others APPELLANT

Vs

Bigur Finance Ltd. RESPONDENT

Date of Decision : 02-12-2013

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 1 JCC 9

Hon'ble Judges : S.P. Garg, J

Bench : Single Bench

Advocate : Jasmeet Singh, for the Appellant; Khalid Arshad, for the Respondent

Judgement

S.P. Garg, J.—Petition u/s 482 Cr.P.C. has been preferred by the petitioners for quashing of the summoning order dated 10.12.2012 and consequent proceedings in Complaint Case No. 422/2001. The petition is contested by the respondents. Counsel for the petitioners urged that they had paid Rs. 52,65,000/- to the respondent by way of six drafts after settlement of all their disputes. Petitioner No. 1 (Ravinder Singh) had instituted a suit being CS(OS) No. 343/2012 against Paramjit Singh, Director of the respondent to claim Rs. 50,55,000/- paid in excess. After a series of negotiation, the parties arrived at figure Rs. 52,65,000/- on the basis of various factors involved in the loan transaction and the process of reconciliation of accounts. The complainant settled the amount for Rs. 52,65,000/- and it was paid on 13.02.2012 before presentation of the cheques. Despite receiving the settled amount in full and final satisfaction of all the claims, the respondent presented the cheques in the bank and instituted proceedings under Sections 138 Negotiable Instruments Act which cannot be sustained. Petitioner No. 2 was at no point of time In-charge of the affairs of the company and was not liable to be prosecuted u/s 138 Negotiable Instruments Act. Counsel relied upon Alliance Infrastructure Project Pvt. Ltd. and Others Vs. Vinay Mittal, . Respondent''s counsel urged that no such payment as alleged was made pursuant to any settlement. The petitioners are liable to pay Rs. 57,35,000/-

towards the three cheques issued by them. It is not disputed that loan agreement dated 07.10.2010 was executed with the respondent and Rs. 1,00,00,000/- was taken as loan on behalf of the petitioner No. 3 through petitioner No. 1, its director. It is also not in dispute that three cheques for a sum of Rs. 1,10,00,000/- were given to the respondent which on presentation were dishonoured. Payment of Rs. 52,65,000/- is admitted. It further reveals that prior to the payment of Rs. 52,65,000/-, the respondent had already presented the cheques in question which were dishonoured. Legal notice dated 27.02.2012 was served upon the petitioners to make the payment of the total amount of three cheques within fifteen days. Six demand drafts of various dates amounting to Rs. 52,65,000/- were given on 01.03.2012. Allegedly, the petitioners did not pay the balance amount of Rs. 57,35,000/- despite promise. It prompted the respondent to institute proceedings u/s 138 Negotiable Instruments Act. The cause of action to file proceedings u/s 138 Negotiable Instruments Act had arisen in favour of the respondent prior to making of payment of Rs. 52,65,000/- when the cheques in question were dishonoured for ''insufficient funds''. The citation is not applicable to the facts and circumstances of the case as in the said case, after receiving partial payment, the complainant had presented the cheques for the whole of the amount mentioned in the cheques. The petitioners have not placed on record any cogent document to infer if payment Rs. 52,65,000/- was in full and final settlement of all the claims. It is a matter to be adjudicated during trial and disputed question of facts cannot be resolved in the proceedings u/s 482 Cr.P.C. It would be primarily and essentially within the domain of the Criminal Court to arrive at on its own conclusion on appreciation of entire evidence.

2. Loan agreement was executed on behalf of the petitioner No. 3 by petitioner No. 1 (its director). The cheques in question were issued by petitioner No. 1, who is the signatory of the cheques. No specific role in obtaining the loan and issuance of the cheques has been attributed to the petitioner No. 2 in the complaint case. There are no averments in the complaint showing consent or connivance on his part. It is not averred as to how petitioner No. 2 being director in the company was in-charge and responsible to the company for the conduct of its business and how he was liable for non-payment of the cheque amount. Petitioner No. 2, simply by being a director in the company, was not supposed to discharge day-to-day functions on behalf of the company. There is no universal rule that a director of a company is in-charge of its everyday affairs. Every director is not automatically, vicariously liable for the offence committed by the company-only the director/in-charge and responsible to the company for the conduct of the business at the material time when offence was committed would be liable. In the instant case, there are no specific allegations in the complaint as to role played by petitioner No. 2 in the transaction.

3. In the light of above discussion, petition filed by the petitioners is partly allowed and proceedings against the petitioner No. 2 (Manjit Singh) are quashed. Trial Court shall proceed as per law against the petitioners No. 1 & 3. The petition

stands disposed of accordingly. Pending application also stands disposed of being infructuous.

