(2014) 05 DEL CK 0106

In the Delhi High Court

Case No : Crl. M.C. Nos. 828, 829 and 830/2014

Survidhi Financial Services Ltd. APPELLANT

Vs

Unity Fin-Cap Private Ltd. RESPONDENT

Date of Decision : 15-05-2014

Acts Referred:
Criminal Procedure Code, 1973 (CrPC) — Section 251, 313, 482
Negotiable Instruments Act, 1881 (NI) — Section 138, 145(2)

Citation : (2014) 05 DEL CK 0106

Hon'ble Judges : V.P. Vaish, J

Bench : Single Bench

Advocate : Anindya Malhotra, Advocate for the Appellant; D.K. Rustagi, Advocate for the Respondent

Judgement

V.P. Vaish, J.—These are petitions under Section 482 of the Code of Criminal Procedure against orders dated 15.10.2013 and 15.12.2012 passed by learned ASCJ/JSCC/GJ/MM, Patiala House Courts, New Delhi in complaint case Nos.2445/2009, 2447/2009 and 2446/2009. Since the similar question of law is involved in all the petitions, therefore, all the three petitions are being disposed of by this common order.

2. The brief facts giving rise to the present petition are that petitioner herein filed a complaint case under Section 138 of the Negotiable Instruments Act that in June 2003 accused No. 1/respondent No. 1 herein through accused Nos.2 to 5 approached the complainant to invest in stock and shares through them. On their assurances, the respondent No. 1 invested a sum of Rs.1,84,75,000/- through accused No. 1 company. The shares/securities purchased by the accused company on behalf of the petitioner/complainant as well as the sale proceeds of the shares and securities sold by the respondent/accused on behalf of the petitioner/complainant were retained by the accused/respondent. After lot of persuasion, a meeting was held and the accused persons issued a letter dated 31.12.2004 containing statement of account that a sum of Rs.1,61,02,474.18

(Rupees one crore sixty one lakhs two thousand four hundred seventy four and eighteen paise) was outstanding balance lying to the credit of the complainant. On presentation, all the six cheques were dishonoured with the remarks ''Funds Insufficient''. The petitioner filed the present complaint in respect of three cheques bearing Nos.195184 dated 05.01.2005, 195185 dated 07.01.2005 and 195186 dated 10.01.2005 amounting to Rs.26,00,000/- (Rupees Twenty Six Lakhs) drawn on HDFC Bank Ltd., Kasturba Gandhi Marg, New Delhi- 110001. On presentation, said cheques were dishonoured. Statutory notices of demand dated 18.01.2005, 20.01.2005 and 25.01.2005 were served by the complainant/ petitioner but the respondents failed to make the payments of the said cheques.

3. Notice under Section 251 Cr.P.C. was served to the respondents on 08.12.2009. The respondents moved an application under Section 145(2) of the Negotiable Instruments Act, 1881 which was allowed by the learned trial Court vide order dated 10.05.2011. Statement of the respondents/accused persons under Section 313 Cr.P.C. was recorded on 03.11.2011, the respondents chose to lead defence evidence.

4. On 04.01.2012, statement of Mr.Sandeep Dandapat, Chief Manager, NSE, (DW-1) was partly recorded and further examination was deferred on the request of the witness. Again on 29.02.2012 DW-1 was partly examined and further examination was deferred. On 15.05.2012, Mr. Sandeep Dandapat (DW-1) was examined, cross examined and discharged and he made a statement before the Ld. Trial court that he has left the job on 12.04.2012 and, therefore, was not in possession of the summoned original documents.

5. An application dated 19.04.2012 was filed on behalf of National Stock Exchange of India Ltd. seeking permission to examine Mr.Gautam Gupta in place of Mr.Sandeep Dandapat (DW-1) on the ground that DW-1 had resigned on 11.04.2012 and the same was accepted on 12.04.2012. Vide order dated 21.04.2012, said application was dismissed by learned trial Court and the defence evidence was closed.

6. The respondents/accused filed an application dated 11.09.2012 seeking permission to bring the documents on record filed by witness of National Stock Exchange. The said application was allowed vide order dated 15.12.2012.

7. Thereafter, respondents moved another application dated 06.02.2013 for exhibiting the documents which were taken on record vide order dated 15.12.2012. The said application was allowed by the trial Court vide impugned order dated 15.10.2013. Feeling aggrieved by the order dated 15.12.2012 and 15.10.2013, the petitioner has filed the present petition.

8. Learned counsel for the petitioner urges that the trial Court had no power to review its order. The application for substitution of defence witness Mr.Sandeep Dandapat was dismissed and the defence evidence was closed vide order dated 21.04.2012. Thereafter, an application was filed by the respondents for examining Mr. Gautam Gupta and same was allowed. The counsel for the

petitioner also submits that the documents which were taken on record vide order dated 15.12.2012 were not produced in Court by the witness. The said documents could not have been proved in accordance with the provisions of Indian Evidence Act.

9. The counsel for the respondents submits that the earlier application for substitution of the witness was filed by National Stock Exchange and not by the accused persons.

10. The counsel for the respondents further submits that the cheques in question were handed over to the petitioner along with letter dated 18.02.2005 wherein it was specifically mentioned that the petitioner would return the cheques in question. He has also pointed out that the respondents have paid a sum of Rs.40 lakhs in cash towards full and final settlement and the petitioner had issued a receipt. The petitioner had acknowledged settlement dated 17.02.2005. According to counsel for the respondents, the respondents want to prove the settlement by summoning the record of National Stock Exchange.

11. I have carefully considered the submissions made by learned counsel for both the parties.

12. In their defence on 10.05.2011, the accused persons had disclosed that settlement had been arrived at between the parties, pursuant to which the entire amount as per settlement was paid to the complainant, and, therefore, they have no liability towards the cheques in question. The petitioner/complainant misused the cheques which were given prior to the cancellation of the accounts. It is settled principle of law that the fair reasonable opportunity should be given to the accused to prove his defence. In the instant case, the accused persons had summoned witness from National Stock Exchange and his examination was partly conducted on 04.01.2012 and 29.02.2012. The examination of the said witness could not be completed and in the meanwhile, the witness had resigned. The respondents/accused persons have a right to examine another witness from the National Stock Exchange. However, the documents filed by the respondents which were taken on record by the Trial Court vide order dated 15.12.2012 were not filed by the witness and authenticity of the same is not clear. Thus, the said documents can be proved by the witness from National Stock Exchange in accordance with the Indian Evidence Act.

13. In view of the above discussion, the respondents are permitted to summon witness from the National Stock Exchange who will produce the original documents and the said documents will be proved in accordance with the Indian Evidence Act subject to the condition that only one effective opportunity will be given to the respondents to examine the said witness.

14. With the above directions, the petitions stand disposed of.

15. The Trial Court record be sent back immediately.

Crl.M.A. No. 2820/2014 in Crl.M.C. No. 828/2014

Crl.M.A. No. 2822/2014 in Crl.M.C. No. 829/2014

Crl.M.A. No. 2824/2014 in Crl.M.C. No. 830/2014

In view of the above, the applications are dismissed as infructuous.