

(2012) 05 DEL CK 0550

In the Delhi High Court

Case No : Criminal L.P. 280 of 2012 and Criminal L.P. 281 of 2012

The National Small Industries Corp Ltd.

APPELLANT

Vs

M/s. Akriti Industries and Others

RESPONDENT

Date of Decision : 25-05-2012

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 251, 378(4), 482
Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2012) 05 DEL CK 0550

Hon'ble Judges : M.L. Mehta, J

Bench : Single Bench

Advocate : Shivnath Kumar, for the Appellant;

Final Decision : Dismissed

Judgement

M.L. Mehta, J.—By way of this common order, the two connected matters are being disposed of. These petitions u/s 378(4) Cr.P.C. read with Section 482 Cr.P.C., are filed seeking leave to appeal against the orders dated 06.02.2012 passed by the Court of Ld. M.M. in the Complaints, which were filed by the petitioner against the respondents u/s 138 of Negotiable Instruments Act (for short the "Act"). Brief facts of the case are that the Complaints were filed by the petitioner against the respondents in the year 2003 and 2004, due to the dishonor of 02 cheques issued in discharge of their contractual liability, and summons were issued to the respondents by the Trial Court on 20.10.2003 & 16.10.2004. The events that unfolded after the issuance of summons against the respondents paint a sordid picture of the affairs in the legal department of the petitioner company. On 06.01.2007, notice u/s 251 CrPC was framed against the accused/respondent No. 2 to which they have pleaded not guilty and claimed trial. The case was thereafter adjourned for after notice complainant evidence for 06.09.2007 on which date, the case was further adjourned for cross examination of CW1 for 15.2.2008. On 31.10.2008, proxy counsel for the petitioner/complainant had appeared and thereafter, the said matter was transferred to the

newly constituted court of M.M. Thereafter, it was further transferred on 26.4.2010 and 9.11.2010 to the new court of M.M but neither the petitioner nor the main counsel of the petitioner was present on this date and it was contended that the counsel for the petitioner did not inform the A.R. of the petitioner corporation in this regard. It was contended that the earlier counsel for the petitioner had misguided the petitioner corporation and he falsely assured the petitioner that the case was running properly and never communicated to the petitioner about the non-appearance of its A.R. before the court of M.M. It was sought to be contended that because of all this, its cases remained unattended for last seven consequent dates of hearing till the impugned order came to be passed on 6.2.2012. It is stated that the Advocate engaged by the petitioner did not inform them about the status of the cases despite several requests made. It was further submitted that the legal cases of petitioner company were transferred to Noida, U.P. in the year 2007 and in the process, some files got misplaced and could not be followed up properly.

2. Next submission of the counsel for the petitioner was that in December 2011, the AR of the petitioner Corporation was transferred and the person substituted in his place made several attempts to know the status of the cases, but failed to do so. Even on the date of passing of the impugned orders, neither the A.R. of the petitioner nor his counsel was present in the court which finally led to the dismissal of the cases in default and for non prosecution of the respondents, resulting in acquittal of respondents.

3. The present petitions and the applications for condonation of delay have been filed after the lapse of 28 days. The learned counsel for the petitioner has advanced reasons such as absence of their main counsel on the date fixed in the trial court, not giving of intimation by the counsel engaged by the petitioner about the status of the cases, transfer of the AR assigned to the cases and lastly the bifurcation of the courts for the inaction and delay on their part.

4. From the perusal of these petitions, the apathy of the Department in pursuing these cases is palpable. The petitioner is a Govt. Corporation having a separate legal department to handle its cases, but the lethargy in the department not only prevails there, but is writ large on their manner of working. It is not only surprising, but shocking to note that the complainant/petitioner did not bother to appear before the Court on numerous occasions and now the buck is fervently tried to be passed on from one counsel to another, engaged by the petitioner. The summons in the case were issued way back in 2003 and 2004, but the case could not even reach to the initial stage of leading pre-summoning evidence due to the apathetic attitude of the petitioner.

5. There has not been a single instance where a case has been dismissed in default due to the transfer of the case or due to bifurcation of the courts and work has been smoothly carried out in all the courts, regardless of any transition. This contention of the counsel for the petitioner is absurd and totally unacceptable. Minor issues like absence of their main counsel on the date fixed in

the trial court, not giving of intimation by the counsel engaged by the petitioner about the status of the cases, transfer of the AR are being tried to be raked for covering up such serious and continued lapses on the part of the petitioner. In the given circumstances, the trial Court was constrained to dismiss the cases for non prosecution. This indifference on the part of the petitioner has resulted in the loss of huge public money. The petitioner even did not mend its ways after the dismissal of the complaint cases, which is apparent from the delay in filing the present leave petitions and applications for condonation of delay.

6. Giving too much latitude to such institutions, ignoring the unaccountable, unjustified and unacceptable delay is one of the primary reasons for the mounting arrears in the Courts. The petitioner must be held responsible for the inaction and lack of co-ordination amongst its department and cannot be allowed to wriggle out of its omissions. The flimsy grounds taken up by the counsel for the petitioner are untenable. The petitions being without any merit are hereby dismissed.