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Court : Mumbai Nagpur

Decided On : Jan-13-2015

Judge : S.B. SHUKRE

Appeal No. : Criminal Writ Petition No. 951 of 2014

Appellant : Sangita

Respondent : Judicial Magistrate, First Class (deleted vide order dtd. 5/12/2014) and Another

Judgement :

Oral Judgment:

1. Heard.

2. Leave to amend paragraph No.13, after accepting unconditional apology tendered by learned Counsel for the petitioner, is granted. He states that the contentions made therein are absolutely unintentional and without really meaning what is mentioned therein. Accordingly, the portion starting from the words, "But it is mentioned therein..... to the last line ending with the words, "....and illogical interpretation" are permitted to be deleted. Amendment to be carried out forthwith.

3. Heard.

4. Rule. Rule made returnable forthwith. Heard finally by consent.

5. The whole crux of the issue involved in this case is about understanding of the concept of "the drawee bank". In the case of Dashrath Rupsingh Rathod Vs. State of Maharashtra and another (Criminal Appeal No.2287 of 2009) (Reported in 2014 (8) LJSOFT (SC) 1) the Hon'ble Apex Court has held that it is the Court within whose territorial jurisdiction the drawee bank has dishonoured the cheque which has jurisdiction to deal with the complaint filed under Section 138 of the Negotiable Instruments Act.

6. According to learned Counsel for the petitioner, the concept of the drawee bank has been enlarged after the advent of Real Time Gross Settlement (RTGS) system. He submits that this is a system wherein payments are made to the payee of the cheques by any of the branches of the same bank on one of whose branches the cheque is drawn, across the country whenever they are presented to any of those branches and, therefore, any or all of these branches of the bank, for the purposes of Section 138 of the Negotiable Instruments Act, 1881 (hereinafter called N. I. Act) offence, can be called as the drawee bank. This contention has been opposed by learned Counsel for the respondent, Shri Daga, who submits that RTGS system is only the system for expediting payment of amounts of cheque which does not expand the concept of "drawee bank" and nothing more.

7. In support of his contentions, learned Counsel for the petitioner has produced before the Court the answers given by Reserve Bank of India to various queries made in relation to the doubts arising from RTGS

system. Copy of these answers is taken on record and for the purpose of identification, it is marked as document 'X'. On perusal of the answers given by Reserve Bank of India, it becomes quite clear, as rightly submitted by learned Counsel for the respondent, that the system called as RTGS is really a system meant for facilitating speedy payment of amounts of the cheque by reducing to minimum the time taken for processing of cheque and it has got nothing to do with, which is the drawee bank and which is not. In conventional processing of cheques, considerable time is spent on obtaining instructions regarding payment or otherwise from the branch of the Bank on which cheque is drawn and where the funds are physically lodged. This processing time is saved in RTGS mode of payment by taking resort to modern technology which has, through web-world or internet, made it possible to quickly access information including information contained in Bank accounts under certain conditions.

At this juncture, it must be understood that there is a difference between processing of cheque for the purpose of making payment and giving nod or approval to the processing branch for payment. The branch which processes the cheque in the sense obtains approval for payment of the branch where funds are actually and physically held and makes the payment can only be called as the processing or facilitator branch. Such branch cannot be called as the "drawee" within the meaning of Section 7, N.I. Act, which defines the term "drawee" as the person directed under the bill of exchange or cheque by its maker to pay. Such a direction can be given and is given only to the branch where the account is actually opened and maintained and funds are physically held. If this were not true, there would be no need to seek transfer of funds by processing branch to it from the branch where the drawer of the cheque has maintained a physical account. Therefore, there can be only one drawee bank and not several and when the RTGS cheques bear an endorsement "payable at all our branches" it only means "payment instructions expedited" enabling receipt thereof immediately. Such an endorsement, however, cannot be seen as a direction independently made, de hors the branch, where funds are physically available, to the processing branch to pay. All these conclusions can be seen as arising logically from the clarifications given by the Reserve Bank of India of which judicial notice can be taken and is taken They are discussed in subsequent paragraphs.

8. In the answer to question No.1, the Reserve Bank of India has made it clear that 'Real Time' means the time taken for processing of instructions at the time they are received rather than at some later time and "Gross Settlement" means the settlement of funds transfer instructions which occurs individually on an instruction to instruction basis. It is also made clear that cheques are immediately processed by the branch to which they are presented because of the fact that funds are to be settled only in the books of the Reserve Bank of India. There is a question No.4 which also broadly indicates the nature of system called RTGS. Answer to this question further makes it clear that what is contemplated under RTGS is only transfer of funds by the drawee bank where they are actually and physically maintained to the other branch of the bank which has received the cheque for making payment of the amount thereunder. The question and answer thereto read as under.:

"Q4. What is the time taken for effecting funds transfer from one account to another under RTGS?"

Ans. Under normal circumstances the beneficiary branches are expected to receive the funds in real time as soon as funds are transferred by the remitting bank. The beneficiary bank has to credit the beneficiary's account within 30 minutes of receiving the funds transfer message."

9. From the above clarifications, it would be clear that RTGS only contemplates transfer of funds from one branch of the bank where they are actually and physically held to the other branch of the bank which has received the cheque for processing and payment of the amount thereunder and this transfer of funds must take place within a time which is of not more than 30 minutes and if there is no transfer of funds from the bank-branch where they are actually and physically held, the payment of the cheque amount cannot be made. In other words, refusal to transfer funds would be the factor determining what is considered as dishonour of cheque by the Hon'ble Apex Court in the judgment in the case of Dashrath Rupsingh Rathod. It would then follow that when funds are not transferred for the reason of insufficiency of funds, etc. as contemplated under Section 138 of the N. I. Act by the drawee or remitting bank (the term used by Reserve Bank of India in

it's above answer to describe the drawee bank), the essential ingredient of dishonour of cheque is fulfilled. It means that dishonour of cheque takes place because of failure or refusal to transfer funds and therefore, it takes place at the place where the bank which so fails or refuses, which is the "drawee bank", is situated. Therefore, the petitioner cannot be allowed to say that the system of funds transfer, which is RTGS, has expanded the concept of the "drawee bank" by making all the branches of the drawee bank as the drawee bank themselves in their own right. Even in the RTGS, there is a transfer of funds, though through paper entries from the drawee bank to its another branch which has accepted the cheque for processing and which makes payment on receiving approval or funds transfer.

10. In this view of the matter, I find neither any illegality nor arbitrariness in the order impugned herein by which the complaint has been returned to the complainant, which order has been passed on 03/11/2014 by learned Judicial Magistrate, First Class, Nagpur. The writ petition deserves to be dismissed.

The writ petition stands dismissed.

Interim stay granted by this Court on 19/11/2014, at the request of learned Counsel for the petitioner, is extended by ten days to enable the petitioner to resort to appropriate remedy in law. Rule is discharged.

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