

Devendra N Kamat Vs. Modelama Exports Ltd

Devendra N Kamat Vs. Modelama Exports Ltd

SooperKanoon Citation : sooperkanoon.com/49698

Court : Delhi

Decided On : Mar-26-2015

Judge : Sunil Gaur

Appellant : Devendra N Kamat

Respondent : Modelama Exports Ltd

Advocate for Pet/Ap. : Mr. Dayan Krishnan, Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami, Mr. Shubham Aggarwal, Mr. Rajat Wadhwa, Mr. Amritansh Batheja

Judgement :

\$~35, 34 & 36 * IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision: March 26, 2015 + (i) CRL.M.C. 4110/2014 & CrI.M.As.14017/14, 14545/14 BALCHANDRA S BAKHLE Petitioner Through: Mr. Dayan Krishnan, Senior Advocate, with Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami & Mr. Shubham Aggarwal, Advocates versus MODELAMA EXPORTS LTD Respondent Through: Mr. Rajat Wadhwa & Mr. Amritansh Batheja, Advocates + (ii) CRL.M.C. 4109/2014 & CrI.M.As.14015/14, 14543/14 DEVENDRA N KAMAT Through: Petitioner Mr. Virender Goswami, Ms. Soni Singh, Ms. Swati Goswami & Mr. Shubham Aggarwal, Advocates versus MODELAMA EXPORTS LTD Respondent Through: Mr. Rajat Wadhwa & Mr. Amritansh Batheja, Advocates + (iii) CRL.M.C. 4111/2014 & CrI.M.As.14109/14, 14544/14 RASHID KHAN Through: CRL.M.Cs. 4109-11/2014 Petitioner Mr. Virender Goswami,

Ms. Soni Singh, Ms. Swati Goswami & Mr. Shubham Aggarwal, Advocates Page 1
versus MODELAMA EXPORTS LTD Respondent Through: Mr. Rajat Wadhwa
& Mr. Amritansh Batheja, Advocates CORAM: HON'BLE MR. JUSTICE SUNIL
GAUR

JUDGMENT

(ORAL) % With the consent of learned counsel for parties, the abovementioned petitions were heard together as the question raised in these petitions is similar and by this common judgment, these three petitions are being disposed of. In the above-captioned three petitions, interpretation of Section 145(2) of Negotiable Instruments Act, 1881 is the question which falls for consideration. Learned senior counsel for petitioner-Balchandra [in Crl.M.C.No.4110/2014]. drew the attention of this Court to trial courts order of 3rd January, 2013 whereby Notice under Section 251 Cr.P.C. has been framed and application of accused under Section 145(2) of Negotiable Instruments Act, 1881 was allowed and the case was adjourned for cross-examination of complainant for 11th March, 2013. On the aforesaid date, complainant had placed on record additional documents and the trial court had adjourned the case for 22nd April, 2013 for cross-examination of complainant. However, it is evident from the order of 22nd April, 2013 of trial court that on that day application for transfer of case was filed by accused for transfer of the case to the court CRL.M.Cs. 4109-11/2014 Page 2 of competent territorial jurisdiction. The said application has been rejected by trial court vide order of 22 nd April, 2013 on the ground that accused has been summoned to face trial and it was not in its power to review its own order. Aforesaid order of trial court was assailed by petitionerBalchandra by way of revision petition which stands dismissed vide order of 27th August, 2013. To assail the orders of courts below, learned senior counsel for petitioner-Balchandra relied upon Apex Court decision in Dashrath Rupsingh Rathod v. State of Maharashtra (2014) 9 SCC129 wherein it has been held as under:

We are quite alive to the magnitude of the impact that the present decision shall have to possibly lakhs of cases pending in various courts spanning across the country. One approach could be to declare that this judgment will have only prospective pertinence i.e. applicability to complaints that may be filed after this

pronouncement. However, keeping in perspective the hardship that his will continue to bear on alleged respondent-accused who may have to travel long distances in conducting their defence, and also mindful of the legal implications of proceedings being permitted to continue in a court devoid of jurisdiction, this recourse in entirety does not commend itself to us. Consequent on considerably consideration we think it expedient to direct that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881 will proceeding continue at that place. To clarify, regardless of whether evidence has been led before the Magistrate at the pre-summoning stage, either by affidavit or by oral statement, the complaint will be maintainable only at CRL.M.Cs. 4109-11/2014 Page 3 the place where the cheque stands dishonoured. To obviate and eradicate any legal complications, the category of complaints cases where proceedings have gone to the stage of Section 145(2) or beyond shall be deemed to have been transferred by us from the court ordinarily possessing territorial jurisdiction, as now clarified, to the court where it is present pending. All other complaints (obviously including those where the respondent-accused has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with our exposition of the law. If such complaints are filed/refiled within thirty days of their return, they shall be deemed to have been filed within the time prescribed by law, unless the initial or prior filing was itself time-barred.

Reliance was also placed upon later decision of Supreme Court in Shivgiri Associates v. Metso Mineral (India) Pvt. Ltd. (2014) 12 SCC366 and judgment of Bombay High Court in Peter Devid Xavier Pinto v. Dinesh M. Ranawat & Anr. 2014 SCC Online Bom. 1248 as well as judgment of this Court in Tr. P.(Crl.) No.68/2014 titled HDFC Bank Ltd. v. Vardhman Precision Profiles & Tubes P. Ltd. & Anr. decided on 24th September, 2014 to submit that mere filing of evidence by way of affidavit by the complainant would not save the proceedings from the operation of law because recording of evidence had commenced as envisaged in Section 145(2) of the Negotiable Instruments Act, 1881. Learned senior counsel for petitioner-Balchandra also relied upon Apex Courts judgment in Mandvi Cooperative Bank Limited v. Nimesh B. Thakore (2010) 3 SCC83 to substantiate

the above stand. Thus, it was submitted on behalf of petitioner-Balchandra that impugned order CRL.M.Cs. 4109-11/2014 Page 4 deserves to be quashed and complaints of complainant deserve to be transferred to court of competent territorial jurisdiction. Learned counsel for petitioners-Devender and Rashid Khan adopts the above submissions. Learned counsel for respondent-Modelama Exports Ltd. supported the impugned order and submits that the stage under Section 145(2) of Negotiable Instruments Act, 1881 is reached when the application under Section 145(2) of Negotiable Instruments Act, 1881 is allowed and the court permitted the complainant to tender his chief-examination by way of an affidavit and it has been so done. Attention of this Court was drawn to Section 137 of Indian Evidence Act, 1872 to submit that commencement of evidence began by filing of chief-examination and thus, it is submitted that Apex Court in Dashrath Rupsingh (supra) is quite clear that once the stage under Section 145(2) has reached, then the case is not to be transferred. Learned counsel for respondent-Modelama Exports Ltd. supported the impugned order and submits that the stage under Section 145(2) of Negotiable Instruments Act, 1881 is reached when the application under Section 145(2) of Negotiable Instruments Act, 1881 is allowed and the court permitted the complainant to tender his chief-examination by way of an affidavit and it has been so done. Attention of this Court was drawn to Section 137 of Indian Evidence Act, 1872 to submit that commencement of evidence began by filing of chief-examination and thus, it is submitted that Apex Court in Dashrath Rupsingh (supra) is quite clear that once the stage under Section 145(2) has reached, then the case is not to be transferred. The afore-noted submissions have been already considered by this CRL.M.Cs. 4109-11/2014 Page 5 Court while rendering decision in CRL.M.C.700/2014 titled Neerav J.

Shah & Anr. v. State & Anr. on 23rd March, 2015 and this Court has come to a conclusion that once the cross-examination consequent upon allowing of application under Section 145 (2) of the Negotiable Instruments Act, 1881 has not taken place, then the said complaint under Section 138 of the Negotiable Instruments Act, 1881 is to be returned to the complainant for refiling it within thirty days before the court of competent territorial jurisdiction. On the reasoning of the afore-noted decision in Neerav J.

Shah (supra), these three petitions ought to succeed, but the question of joint trial in the three complaints in question is also the subject matter in CRL.M.Cs. 3380, 3388, 3409 & 3410 of 2014 in which vide a separate order, this Court has directed that joint trial of the complaints in question is to take place with complaint in CRL.M.C. 3410/2014 titled M/s. Modelama Exports Ltd. v. Trimurti Exports & Ors., which is the main case. In view of afore-noted development, these petitions are to be jointly tried with CRL.M.C. 3410/2014 and so, they cannot be treated at par with case of petitioner-Neerav J.

Shah (supra) in CRL.M.C. 700/2014. Consequently, these petitions are dismissed while not commenting upon merits of this case. (SUNIL GAUR) JUDGE MARCH 26 2015 s CRL.M.Cs. 4109-11/2014 Page 6

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com