

Sunil Kumar Vs. Yog Raj

Sunil Kumar Vs. Yog Raj

SooperKanoon Citation : sooperkanoon.com/626504

Court : Punjab and Haryana

Decided On : Apr-27-2002

Reported in : 2002(2)ALD(Cri)311

Judge : Adarsh Kumar Goel, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138 and 140(2); [Code of Criminal Procedure \(CrPC\) , 1973](#) - Sections 482

Appeal No. : Crl. Misc. No. 13986-M of 1996 (O and M)

Appellant : Sunil Kumar

Respondent : Yog Raj

Advocate for Def. : None

Advocate for Pet/Ap. : P.K. Gupta, Adv.

Disposition : Petition dismissed

Judgement :

ORDER

Adarsh Kumar Goel, J.

1. Counsel for the petitioner contends that the complaint was filed on 20.1.1996, which was within 14 days of return of notice dated 30.12.1995, which was returned

on 6.1.1996 with the remarks that the addressee was not found. It is contended that the complaint is pre-mature.

2. In Narsingh Das Tapadia v. Goverdhan Das Partani and Anr., I(2001)BC 113 (SC)=VI (2000) SLT 523=2000(7) SCC 183, it was held that a complaint cannot be dismissed on the ground that the same was filed before expiry of a period of 30 days, as laid down under Section 140(2) of the [Negotiable Instruments Act, 1881](#). At best, the complaint can be adjourned and further proceedings commenced after expiry of period of 30 days.

3. Counsel for the petitioner relied on a judgment of Kerala High Court in Viswandhan v. Surendran, 1998(2) Civil Court Cases 589. In view of the judgment of the Supreme Court, the judgment of the Kerala High Court cannot be relied on. Similarly, the judgment of the Madras High Court in P. V.R.S. Manikumar v. Krishna Reddy, II (1999) BC 353=IV (1999) CCR 37= 1999(3) Civil Court Cases 322, can also not be followed for the same reason. The judgment of the Supreme Court in Sadanandan Bhadrar v. Madhavan Sunil Kumar, I (1999) BC 691 (SC)=VII (1998) SLT 157=111 (1998) CCR 238 (SC)=1998(4) RCR (Criminal) 90 relied on by Counsel for the petitioner is on the question that after cause of action has arisen as a result of first dishonour, the period of limitation will not be extended by second dishonour. In any case, the said-judgment does not lay down the law contrary to the judgment of the Supreme Court in Narsingh Das Tapadia's case (supra).

4. Counsel for the petitioner has also referred to judgments reported in Jaya Chandran v. Baburaj. I (1999) BC 250 =1998(3) Civil Court Cases 455 and Tomy Jacob Kattikkaran v. Dr. Thomas Manjaly and Anr., III (1997). CCR 99 (SC)=JT 1997(7) SC 344, for submitting that the return of notice on account of addressee not being available did not amount to service as the complainant had failed to examine the postman or the neighbour and that service of notice was a condition precedent. There is no dispute with this proposition of law, but the question is yet to be examined by the Trial Court. In the complaint, it has been stated that notice was refused intentionally and at this stage it cannot be assumed that the complainant will not be able to prove the said allegations. In any case the

complainant can succeed only if the allegation, as stated, is proved.

5. In view of the above, there is no merit in this petition and the same is dismissed.

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