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Court : Delhi

Decided On : Feb-21-2005

Reported in : IV(2006)BC283

Judge : Manju Goel, J.

Acts : Negotiable Instruments Act, 1881 - Sections 133 and 138

Appeal No. : Cri. Revn. Petition Nos. 766 and 767 of 2003

Appellant : Laltech Engineering Projects Pvt. Ltd. and anr. Etc.

Respondent : Gypsum Structural India Pvt. Ltd.

Advocate for Def. : Jasbir Sharma and Anil Gupta, Advs.

Advocate for Pet/Ap. : Vasdev Lalwani, Adv

Disposition : Petition dismissed

Judgement :
ORDER

Manju Goel, J.

1. The only point raised in these revision-petitions is that the complaint should have been filed on the basis of the notices dated 21-12-2001 under Section 138 of the Negotiable Instruments Act, that is, after giving 15 days for payment counting from the date of service of the notices dated 21-12-2001. The complainant/respondent in this case submitted the cheques in question to the bank for payment after the notices of 21-12 2001 and on those cheques being dishonoured once again, another notice dated 7-3-2002 for payment was sent. The complaint is within time from the date of second notice of demand. It is pleaded that the demand having been made first on 21 2-2001, rest of the action under Section 138 of the Negotiable Instruments Act had to follow this notice. Reliance is placed on the judgment of the Supreme Court in the case of Central Bank of India v. Saxons Farms, : AIR 1999 SC3607 in which it was held that the language of the notice 'kindly arrange to make the payment to avoid the unpleasant action of my client' was sufficient to constitute a clear demand as contemplated under Clause (b) of proviso to Section 138 of the Negotiable Instruments Act. In the present case the notice does not appear to have been drafted keeping in view the action under Section 138 of the Negotiable Instruments Act. Although the cheques have been mentioned in the notice, the demand made is in respect of the dues rather than in respect of the cheques. The notice has a heading saying 'irregularities on issuing the cheques for the work done under various work orders.' It goes on to say 'We highly regret to inform you that unwanted behavior has been adopted by you, while issuing the following cheques against the work done of laying of pipes by 'Trenchless Technology.' Though the grievance expressed is about the unwanted behavior in issuing the cheques, the notice goes on to mention the two cheques which are in question and informs that the cheques have bounced on account of instructions of 'stop payments.' The notice concludes by saying 'please ensure to release payment, urgently to us by Demand Draft to avoid any further action from our end, for which we have restrained ourselves till this date.' (It may be mentioned here that Cri. Revn. Petn. No. 766/2003 relates to Cheque No. 648546 dated 15-11-2001 and, Cheque No. 648547 dated 15-12-2001 for' Rs. 6,33,949/- and Crl. Revn. Petn. No. 767/ 2003 relates to Cheque No. 649191 dated 10-11-2001 for Rs. 4,94,500/- and Cheque No. 649193 dated 29-11-2001 for Rs. 2,96,700/-).

2. Clearly the demand is not in respect of the four cheques only but in respect of payments which were due. In fact the notice gives an idea that the creditor was even aggrieved in respect of the manner of issuance of the cheques meaning thereby the creditor expected more payments than what was offered by the cheques. This notice is not similar to the notice which was under consideration in the case of Central Bank of India 1999 Cri LJ 4571 (supra). The notice in Central Bank of India (supra) was in following language (para 5) :

'The bouncing of the two cheques is a most serious matter. The said act of issuance of cheques knowing fully well that the same shall not be paid statues (constitutes) an offence under Section 133 of the Negotiable Instruments Act. As per the provisions of this Act my client through this notice informs you that my client shall represent the two cheques again and if the same are returned unpaid, my client shall report the matter to the police for initiating appropriate criminal action against you all. My client further reserves the right to file criminal case against all of you for the non-payment of the cheques in question and details given above. Kindly arrange to make the payment of the cheques if you intend to avoid the unpleasant action of my client.'

3. The notice in the case of Central Bank of India was clear and categorical mentioning in so many words that unless the payment was made an action under Section 138 of the Negotiable Instruments Act was likely to be initiated. In this situation even if the notice did not say the exact amount of the cheques which were required to be paid the notice w'as found to be sufficient. In the present case the entire tenor of the two notices of 21-12-2001 is different. The notices In these cases do not intend to be notice under Section 138 of the Negotiable Instruments Act. The language of these notices also do not make a notice under Section 138 of the Negotiable Instruments Act by default. In my opinion the complainant cannot be held to be bound by the notices of 21-12-2001 as if these notices were under Section 138 of the Negotiable Instruments Act. His case based on the subsequent presentation of the cheques before the Bank and subsequent notices of demand cannot be said to be invalid. There is no dispute that counting from the second notice the complaint is within time.

Dismissed.

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