

Dev SarIn Vs. Dcm Financial Services Ltd. and anr.

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SooperKanoon Citation : sooperkanoon.com/713302

Court : Delhi

Decided On : Jul-12-2007

Reported in : IV(2007)BC300

Judge : B.N. Chaturvedi, J.

Acts : Code of Criminal Procedure (CrPC) - Sections 281; [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Crl. Misc. Case No. 1263 of 2007

Appellant : Dev Sarin

Respondent : Dcm Financial Services Ltd. and anr.

Advocate for Def. : U.L. Watwani, Adv. for Respondent No. 1

Advocate for Pet/Ap. : R.B. Mehrotra, Sr. Adv.; Sidharth Luthra; S.S. Nehra an; Rajendra Verma, Advs

Judgement :

ORDER

B.N. Chaturvedi, J.

Crl. M.C. No. 1263/2007 & Crl. M. No. 4437/2007:

1. Heard.

2. The petitioner is an accused facing trial in a case under Section 138 of the Negotiable Instruments Act filed by respondent No. 1. On respondent No. 1 concluding its evidence and statement of the petitioner being recorded under Section 281, Cr.P.C. the matter was posted for the first time for defense evidence on 16th January, 2006. No evidence was, however, produced by the petitioner on that day and the matter was thus adjourned to 25th March, 2006. On the adjourned date again there was no evidence from the side of the petitioner and the case was thus adjourned to 5th July, 2006, making it clear that it would be last and final opportunity. The petitioner however again did not produce his defense evidence on 5th July, 2007, which occasioned yet another adjournment. The matter was eventually posted for 26th September, 2006 on payment of cost of Rs. 200/- with the condition that it would be last opportunity. On 26th September, 2006 also no defense evidence was produced. At the request of the petitioner, the Court concerned waited till 12.15 p.m. to enable him to produce his defense evidence, but on the case being taken up after pass over as requested, the Trial Court found that neither any defense witness of the petitioner nor his Counsel was present. The Court thus closed the defense evidence and posted the matter for final arguments on 21st November, 2006.

3. The petitioner later filed a revision petition on 1st February, 2007 against the order dated 26th September, 2006 closing his defense evidence. The revision petition was, however, dismissed noticing that there was no illegality or material irregularity in the impugned order and that the conduct of the petitioner showed that the inordinate delay in filing the revision petition was mala fide and the only purpose of the petitioner appeared to delay the disposal of the case.

4. Learned Counsel for petitioner submits that on 26th September, 2006, which was the last date for producing defense evidence, though the statement in examination-in-chief of the petitioner on affidavit was ready, the same could not be filed before the learned Trial Court, since the learned Counsel for the petitioner got stuck up in Supreme Court and could not reach the Trial Court on time. Learned Counsel for the respondent/company, on the other hand, contests the plea of the learned Counsel for the petitioner in this regard by pointing out that if the evidence of the petitioner on affidavit would have actually been ready, the same could have

very well been filed in the Court by the petitioner himself even if his Counsel was not available, being held up in Supreme Court as contended.

5. Be that as it may, even though no fault can be found with the impugned orders of the Trial Court or the Revisional Court since the petitioner, who is the lone witness to appear in his defense, is having his statement in examination-in-chief ready to be filed, in the interest of justice, the same is allowed to be taken on record by the learned Trial Court, subject to payment of costs of Rs. 5,000/-. The petition is, in the circumstances, disposed of by allowing the petitioner to file his statement in examination-in-chief on affidavit before the Trial Court on 27th July, 2007 and make himself available for cross-examination on behalf of respondents. It is made clear that in case petitioner fails to avail of the opportunity as granted to him, he shall not be entitled to seek any further opportunity in this regard.

6. The petition is disposed of.

7. dusty.