

Surana Traders, Rep. by Its Partner, R. Sukumar and anr. Vs. T.T.K. Taxtex Limited (Formerly Known as T.T.K. Textiles Limited), Rep. by Its Manager Exports, Mr. Prem Natesan

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Court : Chennai

Decided On : Feb-17-2005

Reported in : 2005(2)ALD(Cri)6; IV(2005)BC180; 2005(2)CTC209

Judge : M. Chockalingam, J.

Acts : [Negotiable Instruments Act, 1881](#) - Sections 138

Appeal No. : Crl. O.P. Nos. 16286 and 16287 of 2004

Appellant : Surana Traders, Rep. by Its Partner, R. Sukumar and anr.

Respondent : T.T.K. Taxtex Limited (Formerly Known as T.T.K. Textiles Limited), Rep. by Its Manager Exports, Mr.

Advocate for Def. : Gupta, Adv.

Advocate for Pet/Ap. : V. Sairam, Adv.

Judgement :

ORDER

M. Chockalingam, J.

1. These O. Ps. have been brought forth by the petitioners who are facing trial in C. C. Nos. 1642 and 1643 of 2002 on the file of the VII Metropolitan Magistrate, George Town, Chennai for the offence under Section 138 of the Negotiable Instruments Act. The petitioners pray for quashing the proceedings in the said C. C. Nos.

2. The only point raised by the counsel for the petitioners before this Court is that the respondent/complainant has already issued a notice dated 3.12.2001 and after service of the same, cause of action also arose, but the respondent/complainant has not availed cause of action but allowed it to be lost and then he gave a second notice on 25.2.2002 and now files complaint pursuant thereto. Under the circumstances, since complaint was lodged after the second notice, the complaint is not maintainable as per the provisions of Negotiable Instruments Act.

3. Heard the learned counsel for the respondent. Copy of the notice issued by the respondent dated 3.12.2001 is placed in the hands of the Court. The copy of the complaints are also perused. As could be seen from the complaints launched by the respondent, due to the dealings between the parties, number of cheques were issued and out of those cheques, the cheques in question were placed by the complainant for payment through their bank on 25.1.2002 and 1.2.2002 respectively and since they were dishonoured, notice was issued on 25.2.2002, but the accused did not make the payment which gave rise to cause of action and the complaints were launched before the lower Court. Now, the contention of the learned counsel for the petitioners that the first notice issued on 3.12.2001 had given the respondent/complainant cause of action and it has also been lost by the respondent cannot be countenanced for more reasons than one. Firstly, the notice that was issued on 3.12.2001 does not speak about any particulars as to the cheques in question and the cheques were also not placed in the hands of the banker then. In this context, it would be appropriate and advantageous to reproduce Proviso (b) to Section 138 of the Negotiable Instruments Act, which runs as follows:

138. Dishonour of cheque for insufficiency, etc., of funds in the accounts

(b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within thirty days of the receipt of information by him from the bank regarding the return of the cheque as unpaid.

4. A very reading of the above provision would clearly indicate that notice that is contemplated to be given to the accused by the complainant is one that is given after the dishonour of the cheque and not before that. In the instant case, cheques were placed on the hands of the banker of the complainant only on 25.1.2002 and 1.2.2002 and dishonoured subsequently and the notice was issued on 25.2.2002 through the counsel of the complainant and thereafter, cause of action for the litigation arose and the complaints were launched and thus, they were in Order. Now, Under the circumstances, it would be very clear that the first letter issued by the complainant on 3.12.2001 cannot be considered as a notice that is contemplated under Proviso (b) to Section 138 of the Negotiable Instruments Act. Under the circumstances, the contention of the petitioners does not carry any merit and cannot be countenanced. The O. Ps, fail and are dismissed. The lower Court is directed to dispose of the matter within a period of three months herefrom. Crl. M. P Nos. 5889 and 5890 of 2004 are closed.

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