

**Ravi Cement Products Limited Vs. Unknown**

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**SooperKanoon Citation :** [sooperkanoon.com/925104](http://sooperkanoon.com/925104)

**Court :** Kolkata

**Decided On :** Jan-17-2012

**Appellant :** Ravi Cement Products Limited

**Respondent :** Unknown

**Judgement :**

CP No. 167 of 2011

IN THE HIGH COURT AT CALCUTTA

Original Jurisdiction

IN THE MATTER OF :

RAVI CEMENT PRODUCTS LIMITED

AND

M/S. KANKANI CONSTRUCTION PVT. LTD.

BEFORE:

The Hon'ble JUSTICE SANJIB BANERJEE

Date : 17th January, 2012.

Appearance :

Ms.Manju Bhuteria, Adv.,

for the petitioner.

Mr.Reetobroto Mitra, Adv.,

for the company.

The Court : The claim is on account of balance sum due upon the sale of a flat in Picnic Garden. The petitioner says that a principal amount of Rs.43.40 lakh is due and the company has no defence to such claim.

The flat was sold by or about August, 2010 and the deed of conveyance was executed on August 3, 2010. The memorandum 2

of consideration appended to the deed of conveyance refers to three cheques having been made over by the vendee to the petitioning creditor. All the cheques were drawn on DBS Bank Limited. The first cheque was dated April 14, 2010 and was for Rs.5 lakh. The second cheque was dated July 26, 2010 and was for Rs.25 lakh. The third cheque was dated July 30, 2010 and was for Rs.18.4 lakh.

It is the petitioner's case that the first cheque for Rs.5 lakh was honoured upon presentation but the two other cheques were dishonoured on presentation. The memoranda of dishonour indicate that the company did not have sufficient funds in its relevant bank account.

The statutory notice was issued on February 7, 2011 with the petitioner claiming interest on the principal amount of Rs.43.4 lakh at the rate of 18 per cent per annum. The company replied by a letter of March 2, 2011 claiming that no sum was due in view of certain transactions that the company had entered with one Metallite Coke and Coal Private Limited and/or the directors of Metallite. The company alleged that in view of the transactions between the company and Metallite, it had apparently been agreed by the parties hereto that not more than a sum of Rs.5 lakh had to be paid 3

by the company to the petitioner in respect of the flat in question before certain acts were done by Metallite. The circumstances referred to by the company

disentitling the petitioner from receiving any more than Rs.5 lakh in respect of the flat have to be seen from the following paragraph in its response to the statutory notice:

"The circumstance under which the aforesaid agreement was arrived at is briefly narrated hereunder. (i) My clients stood as guarantor for the Metallite Coke and; Coal Pvt. Ltd. in respect of a Term Loan availed from State Bank of India, (Commercial Branch) in the tune of Rs.19.50 crores.

(ii) In course of the aforesaid, the property was intended to be transferred to my client. It was agreed that cheques of consideration will be encashed only after confirmation from the said company MCCPL.

(iii) That your client are also aware that Metallite Coke Pvt. Ltd. (henceforth referred as the Company) had issued post dated cheque no.686693 dated 10.12.2010 drawn on Axis Bank, Shakespeare Sarani Branch for amount of Rs.1,62,75,000/- (Rupees One Crore Sixty Two Lacs and Seventy Five Thousands only) in favour of my clients.

(iv) Your client was well aware of this arrangement and agreed to the same. Further, your client having business relation with the Director of MCCPL (Company) and your client was always aware that only upon realization of the said

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cheques issued by them, the question of payment by my client would arise.

(v) Recently, it has come to the notice of my client that the Company MCCPL has shifted its registered office to one of the addresses owned by your client with the knowledge and consent of your client.

(vi) Further, on 27th December 2010 the cheques which were issued by MCCPL, were dishonoured with remarks "fund insufficient". My client has initiated appropriate proceeding against MCCPL.

(vii) Further it has come to the notice of my client that the said Company MCCPL has fraudulently and illegally allotted the shares owned by my client to a third party

and also committed breach of trust.

(viii) Under such facts and circumstances, it is transpired that a conspiracy is hatched against my clients to defraud my clients and siphon away the whole Term Loan amount and Shareholder's Fund illegally.

(ix) Your client is also a party to such conspiracy and is hands in glove to defraud my clients and as such, the cheques have been deposited by your clients knowing fully well that your client had no authority to do so.

(x) My client has lodged a FIR against the Director of MCCPL as well as others taking proper legal action to protect its interest and clear my clients name from any liability arising out of such loan as well as the Sale Deed executed in favour of my client."

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It is such case which has been amplified in the company's affidavit filed in the present proceedings. The company makes out that it has been wronged by Metallite and those in management of Metallite. So much can be understood. What cannot be appreciated is how the company links the petitioner or those in management of the petitioner to the persons in control of Metallite. There is nothing in the reply to the statutory notice or in the company's affidavit from which it can be even hinted that the petitioner was a party to the wrongs allegedly committed by Metallite and its directors or the petitioner had caused any prejudice to the company.

Even if the entire story made out by the company against Metallite is accepted, it does not make out any defence to the present claim of this petitioning-creditor. The company does not claim that the petitioning-creditor owes any money to the company against which the company is entitled to adjust the balance consideration in respect of the flat. Indeed, in a suit which has been filed by the company against Metallite, its directors and the petitioning creditor herein, there does not appear to be any direct relief sought against the petitioner.

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The petitioner has also instituted a suit against the company seeking cancellation of the deed of conveyance. Since the company's defence is found to be completely moonshine and without any basis, CP No.167 of 2011 is admitted. If the entire principal sum of Rs.43.4 lakh together with interest thereon at the rate of 8% per annum from the date of statutory notice (February 7,2011), is paid off by the company to the petitioner within four weeks from date, the petition will remain permanently stayed. In default, the petition will be advertised once in "The Statesman" and once in "Bartamaan" and the advertisements should indicate that the matter will appear before Court on the first available working day after the expiry of four weeks from the date of the publication being made. Publication in the Official Gazette will stand dispensed with.

There will be no order as to costs at this stage. In the event the company pays off the entire amount as indicated to the petitioner, the petitioner will be obliged to withdraw the suit that it has filed against the company seeking cancellation of the deed of conveyance. 7

Urgent certified photocopies of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(SANJIB BANERJEE, J.)

sd./KC.

AR(CR)

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