

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Judgment delivered on: March 31, 2011

+ **CRL.L.P. NO. 136/2010 & CRL.M.A. NO.5095/2010**
+ **CRL.L.P. NO. 137/2010 & CRL.M.A. NO.5096/2010**
+ **CRL.L.P. NO. 139/2010 & CRL.M.A. NO.5102/2010**

M/S. MITHI INTERIORS PVT. LTD **PETITIONER**
Through its Director Through:Mr.R.K.Thakur, Advocate.

Versus

M/S. ESSCON ENGINEERS PVT. LTD & ORS.....RESPONDENTS
Through:Mr.Aditya Gaur, Advocate.

CORAM:
HON'BLE MR. JUSTICE AJIT BHARIHOKE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not ?
3. Whether the judgment should be reported in Digest ?

AJIT BHARIHOKE, J.(ORAL)

+Crl.M.A. No.5095/2010 in Crl.L.P.No.136/2010
+Crl.M.A. No.5096/2010 in Crl.L.P.No.137/2010
+Crl.M.A. No.5102/2010 in Crl.L.P.No.139/2010

Vide above applications, petitioners are seeking condonation of delay in filing of appeals against the dismissal of their respective complaints under Section 138 of the Negotiable Instruments Act (N.I. Act) vide common judgment dated 28.8.2009. Learned counsel for the respondent has no objection if the delay in filing of the appeals is condoned.

In view of the concession given at the Bar and the reasons given in the applications, delay in filing of the appeals against the impugned judgment is condoned.

Applications stand disposed of.

Crl.L.P.No.136/2010

Crl.L.P.No.137/2010

Crl.L.P.No.139/2010

1. Vide this order, I propose to dispose of three leave petitions being Crl.L.P.No.136/2010, Crl.L.P.No.137/2010 and Crl.L.P.No.139/2010 seeking leave to appeal against the impugned judgment of learned Metropolitan Magistrate dated 28.8.2009 vide which he dismissed the three complaints filed by the appellants/petitioners against the common respondents under Section 138 Negotiable Instruments Act.(N.I. Act).

2. Briefly stated, allegations in respective complaints are that respondent No.1 is a private limited company and respondents No.2 and 3 are its Directors. It is alleged in the complaints that respondent No.1 company issued cheques in favour of the petitioner in discharge of the existing legal liability for the services rendered by the petitioner. Those cheques, when presented for encashment, were dishonoured by the drawee bank, namely, UTI Bank. The petitioner, on receipt of information regarding dishonour of the cheques, sent requisite demand notices under Section 138 N.I. Act to the respondents but the respondents failed to make the payment of the amount of those cheques despite service of

demand notices within reasonable period. This led to filing of above three complaints under Section 138 N.I. Act against the respondents.

3. The defence taken by the accused persons in the said complaint was that the complainant earlier was one of the Directors of the accused company M/s Esscon Engineers Pvt. Ltd. Being a Director, complainant also was one of the authorised signatories to operate the bank account of accused company along with accused/respondent No.2, namely, Shubhendu Shekher Awasthi. As respondent No.2 used to travel frequently in connection with the business of the company, some blank cheques signed by him were kept in the custody of the complainant. According to the accused persons, those cheques have been misused by the complainant after his resignation and the cheques in question were never issued in discharge of any debt or liability. The accused persons also claimed that on the retirement of the complainant as a Director of the accused company, instructions were issued to the bank withdrawing the name of the complainant as an authorised joint signatory in respect of bank account of the company and instead instructions were issued to the bank that the bank account of the company would be operated under joint signatures of respondents No.2 Shubhendu Shekhar Awasthi and respondent No.3 Ms.Mukta Awasthi who were inducted as Directors of the company. To prove this, the accused persons examined a witness from the bank as DW-1.

4. Learned Metropolitan Magistrate, on consideration of evidence led by the parties, dismissed the complaint mainly on the ground that as per

the testimony of DW-1 Shri Vivek, Executive UTI Bank vide resolution dated 1.4.2005, respondent No.1 company had appointed respondents No.2 and 3 as authorised signatories to operate its bank account jointly. However, the cheques forming basis of the complaints filed by the petitioner were signed only by one of the authorised signatories, thus, learned M.M. came to the conclusion that the cheques in question which formed basis for the trial of the accused persons under Section 138 N.I.Act were not valid cheques in the eyes of law. As such, the complaints under Section 138 N.I. Act could not be maintained.

5. Learned Shri R.K.Thakur, Advocate appearing for the petitioner submits that learned M.M. has committed a grave error in dismissing the complaints under Section 138 N.I. Act ignoring the fact that the cheques forming basis of those complaints were issued in discharge of valid liability. Learned counsel argued that trial court has committed a grave error in dismissing the complaints on the ground that the cheques in question were not valid cheques for want of the signatures of the second joint authorised signatory. He contended that the factum of authorised signatories to operate the bank account of the company was within the special knowledge of the accused persons and petitioner, being an outsider, could not have known about the facts. Therefore, the accused persons cannot be permitted to take shelter of the aforesaid technical defence to escape the liability under Section 138 N.I. Act.

6. Learned Mr.Aditya Guar, Advocate appearing for the respondent, on the contrary, has contended that unless the cheque is signed by the

authorised signatory/s, it cannot be termed as a valid cheque and learned M.M. has, therefore, taken a correct view in holding that the cheques in question not being signed by the second joint signatory were not valid cheques, as such he has rightly dismissed the complaints under Section 138 N.I. Act.

7. In order to appreciate the contentions of rival parties, it would be useful to have a look on Section 138 N.I. Act. The complainant is required to prove following essential ingredients:-

- (a) That a cheque was drawn by the accused;
- (b) The cheque was presented by the payee or holder in due course for encashment;
- (c) The cheque was returned unpaid by the drawee bank'
- (d) That a notice of demand was issued in writing to the drawer calling upon him to pay the cheque amount;
- (e) Failure of the drawer to make the payment within 15 days of the receipt of demand notice.

8. Thus, in order to bring home the guilt of the respondents under Section 138 N.I. Act, the petitioners are first required to establish that the instruments which were presented for encashment and returned unpaid were actually the cheques as defined under Section 6 of the N.I. Act.

Section 6 of the N.I. Act defines a cheque as follows:-

"6 . "Cheque"

A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.

Explanation 1 .-- For the purposes of this section, the expressions--

(a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

(b) "a truncated cheque" means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

9. On plain reading of aforesaid definition, it is clear that a cheque is a bill of exchange drawn on a specified banker authorising him to pay the amount mentioned in the cheque on demand to the drawee and debit the same to the account of the drawer.

10. Shri Vivek, Executive of UTI Bank(now Axis Bank) Pitam Pura Branch deposed on the basis of the record of the bank account maintained in the bank by respondent No.1 company. He deposed that as per the instructions of respondent No.1 company, mode of operation of its bank account was joint by two Directors of the company, namely respondent No.2 Shubhendu Shekhar and petitioner Mithilesh Jha. He further stated that on 31st March, 2005 petitioner Mithilesh Jha tendered his resignation as Director of the company and vide instructions letter dated 1st April,

2005 of the respondent No. 1 company, the mode of operation of the bank account of respondent No.1 was changed inasmuch as that the petitioner Mithilesh Jha was replaced as a joint signatory for operation of bank account by respondent No.3 Mukta Awasthi. Admittedly, the purported cheques on the basis of which complaints have been filed by the petitioner are signed by only one of the joint signatories namely respondent No.2 Mukta Awasthi. Since the aforesaid purported cheques do not bear the signatures of the second joint signatory, the aforesaid instruments do not qualify the definition of a valid cheque which could be acted upon by the bank in terms of the instructions regarding the mode of operation of the bank account. Thus, in my considered view, learned M.M. has rightly concluded that aforesaid instruments cannot be termed as validly drawn cheques and as such one of the most essential ingredients of offence under Section 138 N.I. Act is lacking in this case. Thus, he has rightly acquitted the respondents for the offence under Section 138 N.I. Act.

11. As regards the submission of learned counsel for the petitioner that the petitioner could not have known about internal arrangements about mode of operation of bank account of respondent No.1 company, it is suffice to say that if the respondents No.2 and 3 have induced the petitioner to accept the cheques signed by one of the joint signatories only by misrepresenting and concealing the fact that valid cheques could be signed jointly by both the authorised signatories, the respondents may have committed an offence of cheating punishable under Section 420 IPC

but by no means it can be said that they are guilty of offence under Section 138 N.I. Act.

12. In view of my discussion above, I do not find any merit in the petitions for leave to appeal. Petitions are accordingly dismissed.

(AJIT BHARIHOKE)
JUDGE

MARCH 31, 2011

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