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## Neerja Parekh Vs Amit Enterprises

### Criminal M.C. 1692 of 2011 and Criminal M.A. 6147 of 2011

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**Court:** Delhi High Court

**Date of Decision:** Feb. 29, 2012

**Acts Referred:**

Civil Procedure Code, 1908 (CPC) â€” Section 20#Criminal Procedure Code, 1973 (CrPC) â€”  
Section 251#Negotiable Instruments Act, 1881 (NI) â€” Section 138, 142

**Citation:** (2012) 3 BC 229 : (2012) 128 DRJ 387

**Hon'ble Judges:** Mukta Gupta, J

**Bench:** Single Bench

**Advocate:** J.L. Madan, for the Appellant; Rajesh Bhatia and Mr. Anupam Gupta, for the Respondent

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### Judgement

Mukta Gupta, J.

By the present petition, the Petitioner seeks quashing of proceedings emanating from the summoning order dated 25th

April, 2005 in complaint No. 336/A/11 filed against the Petitioner for offences punishable u/s 138/142 of the Negotiable Instruments Act, 1881 (in

short the ""NI Act""). Learned counsel for the Petitioner states that the cognizance taken by the learned Trial Court is bad in law and is liable to be

set aside. The complainant has admitted that the demand notice was sent on 20th March, 2003 and thereafter again a demand notice was sent on

22nd May, 2003. Thus, the cause of action accrued only when the first demand notice sent on 20th March, 2003. It is not permissible for the

payee to create another cause of action in respect of the same cheque by issuing another legal notice. Cause of action for a complaint u/s 138 N.I.

Act arises only once with the issuance of notice after dishonour of cheques and received thereof by the drawer. Reliance in this regard is placed on

Prem Chand Vijay Kumar Vs. Yashpal Singh and Another, , Puri International(P) Ltd. & Anr. v. Ram Lal Bansiwala & Sons 135 (2006) DLT 103

and Umesh Tandon & Ors. v. Indian Technological Products 2007 (3) LRC 64 (Del).

2. Per contra, learned counsel for the Respondent states that the present petition has no merit and the order summoning the Petitioner suffers from

no illegality. The Respondent in order to maintain cordial relations in business with the Petitioner agreed not to proceed with the matter after issuing

the first demand notice and once again presented the cheque for encashment. This cheque was again returned back for insufficiency of funds. The

Petitioner was apprised of the said fact but the Petitioner did not respond to the same and thus the Respondent once again issued legal demand

notice to the Petitioner. However, the Petitioner failed to pay the amount even on the second notice and thus the Complainant/Respondent within

15 days of the subsequent notice filed the complaint. Hence the present petition has no merit and is liable to be dismissed.

3. Briefly, the facts of the case are that the Respondent Company M/s Amit Enterprises is dealing in sale and purchase of hardboard articles. The

Petitioner/accused had been purchasing material from the Complainant from time to time on credit basis. Under the agreement, it is provided that

interest at the rate of 24% per annum will be paid, if the said bills are not paid within the stipulate period of two weeks from the date of the bill. It is

alleged that in lieu of the payment of fifteen bills, the Petitioner issued cheque bearing No. 726267 dated 14th March, 2003 for a sum of Rs.

42,949/-in favour of Complainant firm drawn on Punjab National Bank, Maharani Bagh, New Delhi. The said cheque was presented for

encashment but the same was returned dishonoured vide memo dated 17th March, 2003 for ""insufficiency of funds"". Thereafter, the Respondent

issued a legal notice dated 20th March, 2003 to the Petitioner after which the Petitioner contacted the Respondent and requested to represent the

cheque for encashment with an assurance that cheque will be honoured. On the assurance the complainant presented the cheque and the same was

again dishonoured vide memo dated 17th May, 2003 for insufficiency of funds. The Respondent/Complainant immediately contacted the Petitioner

but the Petitioner did not give any satisfactory response and thus the Respondent issued another legal demand notice dated 21st May, 2003 to the

Petitioner. The Petitioner paid no heed to the said notice hence aggrieved by the inaction and non-payment of the bills, the Respondent filed the

complaint u/s 138/142 N.I. Act before the learned Metropolitan Magistrate against the Petitioner. Learned Metropolitan Magistrate vide order

dated 25th April, 2005 issued summons against the Petitioner. Accordingly, notice u/s 251 Cr.P.C. was served on the Petitioner. The order

summoning the accused and taking cognizance on the complaint filed by the Respondent is impugned in the present petition.

4. The basic question which arises in the present petition is that whether the issuance of a second legal demand notice will give rise to a fresh cause

of action or not. It would be relevant to note Sections 138 and 142 of the NI Act which provide:

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

Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person

from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the

amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from

that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any

other provisions of this Act, be punished with imprisonment for [""a term which may extend to two year""], or with fine which may extend to twice

the amount of the cheque, or with both: Provided that nothing contained in this section shall apply unless- (a) The cheque has been presented to the

bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier, (b) The payee or the

holder induce 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 cheques as

unpaid, and (c) The drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the

holder in due course of the cheque, within fifteen days of the receipt of the said notice. Explanation: For the purpose of this section, ""debt or other

liability"" means a legally enforceable debt pr other liability].

142. Cognizance of offences Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable u/s 138 except upon a complaint, in writing, made by the payee or, as the case may

be, the holder in due course of the cheque;

(b) Such complaint is made within one month of the date on which the cause of action arises under clause CO of the proviso to section 138:

2[""Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he

had sufficient cause for not making a complaint within such period.]

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable u/s 138].

5. A conjoint reading of Sections 138 and 142 makes it clear that the dishonour of the cheque by itself does not give rise to a cause of action as

the payment can be made on receipt of the legal notice as contemplated in Clause (b) of the proviso to section 138, NI Act. The failure to pay the

amount within fifteen days of receipt of the demand notice alone gives rise to a cause of action. The giving and receiving of the demand notice

forms the quintessence of the cause of action, which arises due to non-payment. The legislative mandate is that the payee/complainant should give

an opportunity to the drawer to rectify his mistake, or remedy the situation

6. It may be noted that a cheque can be presented any number of time and on each presentation of the cheque and its dishonor, a fresh right and

not a cause of action accrues in favour of the payee. The payee, or holder of the cheque may, therefore without taking pre-emptory action in

exercise of his right u/s Clause (b) of Section 138 of the NI Act, go on presenting the cheque so as to enable him to exercise such right at any point

of time during the validity of cheque. But once a notice under Clause (b) of Section 138 of the NI Act is received by the drawer of the cheque, the

payee or the holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to pay the

amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account. If no prosecution is initiated

within the prescribed time after the cause of action had arisen; the holder of the cheque cannot issue another demand notice demanding payment

postponing the initiation of prosecution. The Hon<sup>ble</sup> Supreme Court in Prem Chand Vijay Kumar (supra) held:-

10. In a generic and wide sense (as in Section 20 of the Civil Procedure Code, 1908 (in short ""CPC"")) ""cause of action"" means every fact which it

is necessary to establish to support a right or obtain a judgment. Viewed in that context, the following facts are required to be proved to

successfully prosecute the drawer for an offence u/s 138 of the Act:

(a) that the cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonored ;

(b) that the cheque was presented within the prescribed period;

(c) that the payee made a demand for payment of the money by giving a notice in writing to the drawer within the stipulated period; and

(d) that the drawer failed to make the payment within 15 days of the receipt of the notice.

Proceeding on the basis of the generic meaning of the term ""cause of action"", certainly each of the above facts would constitute a part of the cause

of action but clause (b) of Section 142 gives it a restrictive meaning, in that, it refers to only one fact which will give rise to the cause of action and

that is the failure to make the payment within 15 days from the date of the receipt of the notice. A combined reading of Sections 138 and 142

makes it clear that cause of action is to be reckoned accordingly. The combined reading of the above two sections of the Act leaves no room for

doubt that cause of action within the meaning of Section 142(b) arises - and can arise - only once.

11. The period of one month for filing the complaint will be reckoned from the day immediately following the day on which the period of fifteen

days from the date of the receipt of the notice by the drawer expires.

12. As noted in Sadanandan Bhadrans case (supra) once a notice under clause (b) of Section 138 of the Act is ""received"" by the drawer of the

cheque, the payee or holder of the cheque forfeits his right to again present the cheque as cause of action has accrued when there was failure to

pay the amount within the prescribed period and the period of limitation starts to run which cannot be stopped on any account.

13. One of the indispensable factors to form the cause of action envisaged in Section 138 of the Act is contained in clause (b) of the proviso to that

section. It involves the making of a demand by giving a notice in writing to the drawer of the cheque ""within fifteen days of the receipt of

information by him from the bank regarding the return of the cheque as unpaid"". If no such notice is given within the said period of 15 days, no

cause of action could have been created at all.

14. Thus, it is well settled that if dishonour of a cheque has once snowballed into a cause of action it is not permissible for a payee to create

another cause of action with the same cheque.

7. Thus in the present case it is clear that the Complainant took no steps to initiate proceedings/prosecution against the Petitioner after issuing the

first demand notice on 20th March, 2003 and hence issuing of a second legal notice on 21st May, 2003 will not give rise to fresh cause of action

against the Petitioner. Thus, the complaint filed by the Respondent is clearly barred by limitation. Keeping in view the settled position of law and

the facts and circumstances of the present case, I am of the opinion that the complaint case number 336/A/11 is liable to be quashed. Accordingly,

the proceedings emanating from the abovementioned complaint case against the Petitioner are hereby quashed. Petition and application are

disposed off.