

(2010) 02 BOM CK 0123

Bombay High Court (Nagpur Bench)

Case No: Criminal Appeal No. 141 of 2006

Krishnakumar Vishwanathprasad
Chaturvedi

APPELLANT

Vs

The State of Maharashtra and
Mrs Rekha Dilip Thakur, Tejdeep
Catering Services

RESPONDENT

Date of Decision: Feb. 24, 2010

Acts Referred:

- Criminal Procedure Code, 1973 (CrPC) - Section 313
- Negotiable Instruments Act, 1881 (NI) - Section 138

Citation: (2010) 3 BC 649

Hon'ble Judges: A.P. Bhangale, J

Bench: Single Bench

Advocate: Mukund Papinwar, for the Appellant; I.S. Charlewar, for the Respondent

Final Decision: Dismissed

Judgement

A.P. Bhangale, J.

By this appeal, appellant (original complainant) impugns judgment and order dated 21st December 2005 passed by the Judicial Magistrate, FC, 23rd Court and Special Court (for trial of cases u/s 138 of the Negotiable Instruments Act) whereby complaint of appellant has been dismissed solely on the ground that it was barred by limitation.

2. It is not disputed that legal notice was sent by complainant on 10.9.2004 making demand of money under dishonoured cheque within fifteen days of the receipt of notice. Postal acknowledgment filed on record as Document No. 7 shows that below her signature, accused has not put the date of receipt. Postal stamp on the acknowledgment mentions the date "14.9.04" as to the delivery thereof to complainant. Accused in her statement recorded u/s 313 Cr.P.C. states that she

received legal notice on 13.9.2004. Complainant also states in paragraph 6 of his complaint that accused received notice on 13.9.2004. Limitation of thirty days to file complaint would, therefore, start running from 27.9.2004. Complaint was filed by appellant on 2.11.2004. Complaint having been filed beyond the period of thirty days from the accrual of cause of action was obviously barred by time. Complaint was unaccompanied by an application for condonation of delay.

3. Learned Counsel for appellant submits that application for condonation of delay was moved, but the trial Court did not consider the same. He submits that it was, in fact, not necessary to move such an application since fifteen days' time for compliance by accused would start running from 16.9.2004 when complainant received postal acknowledgment, but by way of abundant precaution, application for condonation of delay was moved.

4. I have perused order dated 6.12.2005 passed by the Special Court. Application for condonation of delay was made at the time when the complaint was fixed for final hearing. Learned Special Court rejected the same on the ground that it should have been filed at the time of filing of complaint and it was not maintainable at the belated stage of final hearing. Learned Counsel for appellant cannot be heard to say that limitation would start running from the date (16.9.2004) when he claims to have received postal acknowledgment. In this particular case from paragraph 13 of memo of complaint it becomes clear that complainant was fully aware of the fact that accused received notice on 13.9.2004 and it was very well open for complainant to file application for condonation of delay in the beginning only when the complaint proceedings were instituted u/s 138 of the Negotiable Instruments Act. Such an application filed at the final-hearing stage of the complaint has rightly been rejected by the Special Court. No legal infirmity can be seen in the impugned order.

5. In the result, no interference is called for. Appeal is dismissed.