

Reportable
* **HIGH COURT OF DELHI AT NEW DELHI**
+ **Crl.M.C. 2290/2008 & Crl.M.A.8531-32/2008**

Date of decision: 15.09.2008

VINOD KUMAR ARORA & ORS. Petitioners

! Through : Mr. S.N. Gupta, Advocate

Versus

\$ M/S. ROHIT ADVERTISING SERVICE
..... Respondent

^ Through : Nemo.

%

CORAM:
HON'BLE MS. JUSTICE ARUNA SURESH

- (1) Whether reporters of local paper may be allowed to see the judgment?
- (2) To be referred to the reporter or not? Yes
- (3) Whether the judgment should be reported in the Digest ? Yes

J U D G M E N T

ARUNA SURESH, J. (Oral)

1. Present petition is preferred by Vinod Kumar Arora, Petitioner No.1 and Arora Housing Pvt. Ltd., Petitioner No.2 invoking inherent powers of this court for quashing of summoning order dated 23rd

March, 2007 passed by the Learned Metropolitan Magistrate upon complaint dated 23.12.2002 under Sections 138/141 Negotiable Instruments Act (hereinafter referred to as 'N.I. Act'), filed by the complainant, respondent Rohit Advertising Service.

2. Respondent company had got published advertisements for Petitioner No.2 in the newspapers and issued a bill for Rs.1,35,253/-. Petitioner No.2 towards the payment of the said amount issued a cheque of Rs.1,35,008/- dated 14.05.2002 bearing No.273748, drawn on Punjab and Sind Bank, Rajindra Place, New Delhi in favour of the respondent. The respondent on 12.11.2002 came to know that said cheque upon presentation was dishonoured due to 'insufficient funds'. Subsequently, respondent issued a Legal Notice dated 23.01.2002 for demand of payment under the said bounced cheque to Petitioner No.2. Respondent filed a complaint on 23.12.2002 and cognizance of the same was taken by the Magistrate on 19.08.2005 who consequently summoned Shri Kishan Kumar Arora, Chairman-

cum-Managing Director of Petitioner No.2. Since Kishan Kumar Arora expired during the pendency of the complaint, the complaint was dismissed by the Magistrate.

3. Respondent filed a Revision Petition before the Sessions Court against the dismissal of the complaint and the Learned Additional Sessions Judge while allowing the petition on 11.08.2006 remanded back the complaint to the Magistrate for further action. Consequently, respondent filed a fresh list of Directors before the lower court and the Magistrate summoned the present Petitioners vide order dated 23.03.2007. Aggrieved by the said order, the present petition has been filed.
4. Mr. S.N. Gupta, learned counsel for the Petitioners has submitted that in the complaint there are no allegations against Petitioner No.1 and he was not the signatory of the impugned cheque and was not responsible for the discharge of liability of Petitioner No.2 company. It is further submitted that Petitioner No.1 was never arrayed as an

accused in the complaint and that he has been summoned by the court only subsequent to the death of Shri Kishan Kumar Arora, the Managing Director of Petitioner No.2 and the person responsible for the day to day business of Petitioner No.2 company and therefore, the learned Magistrate committed illegality by summoning Petitioner No.1 after the death of Shri Kishan Kumar Arora vide his order dated 23.03.2007. He has prayed that the complaint qua him and the summoning order of the court dated 23.03.2007 being illegal be quashed.

5. Respondent company had filed a complaint under Sections 138/141 N.I. Act against Petitioner No.2 company through its Chairman and Managing Director Shri Kishan Kumar Arora for having published certain advertisements in various newspapers for and on behalf of accused company. Towards payment of the liability, accused company issued a cheque for Rs.1,35,008/- dated 14.05.2002 bearing No.273748, drawn on Punjab and Sind Bank, Rajindra Place, New Delhi in favour of the

complainant company. This cheque on presentation was dishonoured. Consequent thereof complainant served a notice of demand dated 23.11.2002 upon the accused company demanding the cheque amount. The said notice was duly served upon accused company by UPC as per the averments contained in para 6 of the complaint. Since accused company failed to pay the demanded amount of the impugned cheque, a complaint under Section 138 N.I. Act was filed. It is apparent that none of the Directors or the Managing Director were sued in their individual capacity by the complainant. Only the company was sued through its Managing Director Shri Kishan Kumar Arora. Shri Kishan Kumar Arora died during the pendency of the complaint and the learned M.M. dismissed the complaint having being abated. Against the order of the court, a Revision Petition was filed by the complainant which was allowed by the Revisional Court on 11.08.2006 and the case was remanded back to the trial court with the directions to proceed further in accordance with law.

Consequently, the complainant filed a list of Directors before the learned trial court and vide his order dated 23.03.2007, the trial court was pleased to pass the following order:-

“23/3/07 Sh. Dinesh Chand Sharma Complainant in person.

The case has been filed today for consideration of application by way of which a list of directors was furnished where names were filed in Record by the complainant. Admittedly none of the directors whose name has been furnished on Record by way of the application was arranged as an..... However, after the death of main accused Roshan Lal Arora, the complaint was dismissed as abated which order was later on set aside by Sh. Ramesh Kumar Id. ASJ, Delhi, in Revision Petition No.16/06 dt. 11/8/06 wherein the court of Id. ASJ has directed this court to process further in the case against the accused company in view of the same, the accused company through its present MD (Managing Director) be summoned on filing PF/RC courier Dasti.”

6. Thus, it is clear that the trial court issued summons for appearance to the accused company to be served through its present Managing Director.

These summons for appearance were received by Petitioner No.1 and he put in appearance before the trial court. Admittedly, notice under Section 251 Cr.P.C. has already been framed against the Petitioners and now the complaint is pending trial for recording of evidence of the complainant.

7. Petitioner No.1 filed his Affidavit as per the directions of this court admitting that he was the Director of the Company at the time of issuance of the impugned cheque and still continues to be the Director of the company. However, he is silent if he after the death of Sh. Kishan Ku mar Arora he became the Managing Director of the company and if not who is the Managing Director of the company. It is not disputed that he is not the signatory of the cheque. The fact remains that the company who is a juristic person that is persona in law cannot be absolved of its liability to pay the cheque amount which was issued by it through its the then Managing Director who has since expired. The court has summoned the company through the present Managing Director. Under these

circumstances, when the liability of the company is not absolved on the death of the Managing Director and company is liable to pay the amount of the impugned cheque to the complainant as claimed in the complaint, it is irrelevant if in the complaint, the complainant did not aver that Petitioner No.1 was also responsible for day to day business of the company being its Director at the relevant time. Company has to be represented through one of its Directors.

8. Learned counsel for the Petitioner while referring to '***S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr., JT 2005 (8) SC 450***', has submitted that the complainant had not arrayed Petitioner No.1 as one of the accused persons along with the accused company and no responsibility had been attributed to Petitioner No.1 in the complaint. The learned M.M. was wrong when he passed the impugned order which is bad and is liable to be quashed. However, the submissions of the learned counsel for the Petitioners are not forceful to be accepted by the

court.

9. In the said case, the complainant had arrayed the other Directors of the company along with accused company in the complaint and when the Directors challenged the summoning order, the court held that the complainant should have specifically mentioned in the complaint that all the accused Directors were responsible for conducting the day to day business of the company and in the absence of such averments, the complaint as against the Directors who were arrayed in their individual capacity was liable to be quashed.

10. In the present case, Petitioner No.1 has not been arrayed as co-accused with the company being the Director of the company and personally liable for the conducting the business of the company. It is the accused company which has been sued by the complainant through its Managing Director. The order of the trial court clearly indicate that Petitioner No.1 was not summoned in his individual capacity by name as director of the company. It

was the company who was summoned through its present Managing Director after the death of Shri Kishan Kumar Arora.

11. Hence, I find no merits in this petition and the same is accordingly dismissed in limine.

**ARUNA SURESH
(JUDGE)**

September 15, 2008
vk