



Summary Cases/5800006/2022
Omakara Assets Reconstruction Pvt Ltd Vs. The
Polaris Textile City

IN THE COURT OF THE JUDICIAL MAGISTRATE (FIRST CLASS),
58TH COURT, BANDRA, MUMBAI
ORDER BELOW APPLICATION EXH.14

1. This is an application for amendment in the complaint, rather to say the application for substitution of new representative in place of original complainant.
2. It is contended on behalf of the applicant that an Assignment Agreement dated 31.05.2023 is executed with the proposed complainant named Edelweiss Asset Reconstruction Company Ltd. The rights are assigned in respect of financial assistance. Hence, this application.
3. The application is strongly objected on behalf of the accused contending that the rights were initially assigned to the complainant by ECL Finance Ltd. Now by this application, the company in whose favour financial rights are assigned is again assigning the rights to proposed complainant. The accused has question the right of assignment on the ground of criminal liability and accordingly, prayed for rejecting the same.
4. Heard both sides.
5. Needless to state that the original complainant Omkara Assets Reconstruction Pvt. Ltd., filed the complaint stepping in the shoes of ECL Finance Ltd. and Edelweiss Assets Reconstruction Company Ltd. who alleged to have provided financial assistance to the accused. In fact, now the original complainant has again re-assigned the rights to the proposed complainant named Edelweiss Assets Reconstruction Company Ltd. by virtue of an Assignment Agreement dated 31.05.2023. In the scenario question crops up whether rights can be assigned for determining any criminal liability envisaged under section 138 of the Negotiable Instrument Act.

6. Needless to state that the person whomsoever is a holder in due course of the cheque drawn for in discharge of any legal liability can pursue the complaint. Herein the case, the rights are assigned vide Agreement dated 31.05.2023. Thereby the proposed complainant becomes holder in due course of the cheque in question alleged to be issued by the accused. Therefore, there is no legal hitch in allowing the application even though the original complainant has presented the complaint stepping into shoes of ECL Finance Ltd. and another. It will not cause any prejudice to the rights of the accused. Further accused has ample opportunity to challenge the locus standi of complainant on all legal grounds during the trial. There would not be any change in the nature of the complaint.

7. In the case ***Harikrishnan Selvakumar Vs. L & T Infrastructure Finance Company Ltd., in Criminal Application No.329 of 2015 in Criminal Writ Petition No. 1709 of 2014*** delivered on 07.03.2016, Hon'ble Bombay High Court has held that, "In view of section 9 of the Negotiable Instrument Act which defines "Holder in due course" to mean "any person, who, for consideration, becomes possessor of cheque of the payee or endorsee thereof". Hence, I pass following order.

ORDER

1. Application is allowed keeping open all defence for the accused in the interest of justice.
2. Complainant to do necessary changes in the caption of the complaint forthwith.
3. Order dictated and pronounced in open court.

Mumbai,
Dated : 09.10.2024.

(M. P. Saraf)
Judicial Magistrate(First Class),
58th Court, Bandra, Mumbai.
J.O.Code-MH01362

CERTIFICATE

I affirm that the contents of this P.D.F. file Order are same, word to word as per the original Order.

Name of Stenographer : Mrs. Aditi Ravikiran Dalvi
Court : Judicial Magistrate(First Class), 58th Court, Bandra, Mumbai.
Dictated in open court on : 09.10.2024.
Transcribed and Typed on : 09.10.2024.
Order printed and Signed on : 09.10.2024.
Order Uploaded on : 09.10.2024.