Presented on :05.02.2016
Registered on :05.02.2016
Decided on :13.02.2019
Duration: **Years** **Months** **Days**
03 **00** **08**

In The Court Of 31st Jt.Civil Judge Senior Division and Addl. C.J.M. Pune.
(Presided over by- Madhuri R. Khanwe)

Sum. Crim. Case No.2969/2016. **Exh. No.58.**

Gruh Finance Ltd,
having its registered office at
"GRUH", Netaji Marg,
Near Mithakhali Six Roads,
Ellisbridge, Ahmedabad 380006.
And
Branch Office At 203/204,
Akruti Chambers, Pune, Satara Road,
Near Swargate ST stand,
Swargate 411037,
Through its authorized officer
i.e. Branch Manager
Shri. Sandip Krishna Kadam,
Age- 34 Years, Occu.- Service,
R/o-203/204, Akruti Chambers, Pune,
Satara Road Near Swargate ST Stand,
Swargate Pune-411037. ………..Complainant.

-Versus-

Mrs. Pradnya Vikas Patil,
Age- 43 Years, Occupation- Business,

R/o- Flat NO. 08. 4th Floor,
Ashram Apartment PYC Colony,
Near Deccan Gymkhana,
Pune - 411004. ....Accused.

APPEARANCES :-

Ld. Counsel for Complainant– **Adv. Sanjay T. Agarwal.**

Ld. Counsel for Accused – **Adv. Dinesh Y. Kabade.**

COMPLAINT UNDER SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT.

JUDGMENT
(Delivered on this 13th day of February, 2019)

1] It is a complaint case filed by complainant "Gruh Finance Ltd." through its authorized officer Branch Manager Sandip Krishna Kadam against the accused. According to him, the accused and her husband approached to the complainant and applied for Housing Loan of Rs.1,50,00,000/- for the purchase of flat 08, 4thFloor, Plot No.243/17, CTS no. 768/17, Ashram Apartment Near Deccan Gymkhana Pune. Accordingly complainant had sanctioned housing loan to the accused on 12/02/2014 as requested and accused agreed the terms and conditions of complainant. As per terms and conditions of loan agreement, accused and her husband were required to pay 360 equal monthly installments of Rs. 1,57,185/-. However accused was never regular in payment of said installments and therefore the amount of Rs. 9,43,110/- was due and payable by accused and her husband on account of arrears of repayment up to November 2015. When the arrears were demanded, accused issued cheque no. 350679 dated 30/11/2015 for the amount of Rs. 9,43,110/- in favour of complainant with an assurance that said cheque would be honored positively on its presentation. However when the cheque was presented in the bank on 01/12/2015, it was returned back for the reason "Funds Insufficient". Said fact was informed to accused, however despite assurances the accused failed to repay the cheque amount to the complainant. Therefore a legal notice Dated 21/12/2015 was issued by complainant through their advocate. However accused failed to comply in spite of receipt of notice. Hence this compliant case.

2] The then predecessor of this court had explained the contents of particulars of offence punishable under Section 138 of Negotiable Instruments Act to accused vide **Exh.09** Accused pleaded not guilty and claimed to be tried.

Complainant has examined himself as CW 1-Sandip Krishna Kadam at **Exh.14.** The statement of accused under section 313 of Criminal Procedure Code was recorded vide **Exh. 41**, wherein she has submitted that false case is filed against her. In defence accused has examined herself as AW 1-Pradnya Vikas Patil **(Exh. 43)**. I heard Ld. Advocate for complainant and carefully gone through the record and written notes of arguments submitted on behalf of accused and case-laws placed on record by both parties.

3] In view of contents of particulars following points arise for determination and I have given my findings thereon against each of them with the reasons given below :-

Sr. No.	**POINTS**	**FINDINGS**
[1]	Does the complainant prove that, accused has issued cheque of Rs. 9,43,110,/- bearing No.350679 on dated 30/11/2015 in favour of complainant for discharge of any legally enforceable debt or liability ?.....	**...In the Affirmative.**
[2]	Does Complainant prove that, cheque issued by accused was dishonored for want of sufficient funds ?.....	**...In the Affirmative.**
[3]	Does Complainant prove that, notice demanding cheque amount was duly	**...In the**

	served upon accused and accused failed to comply it ?.....	**Affirmative.**
[4]	What order ?.....	**...As per Final Order.**

REASONS

AS TO POINT NO.1 TO 4 :-

4] To bring home the guilt of accused under Section 138 of Negotiable Instrument Act, complainant has to prove following ingredients,

(i) that there is a legally enforceable debt;

(ii) that the cheque was/were drawn from the account of bank for discharge in whole or in part of any debt or other liability which pre-supposes a legally enforceable debt; and

(iii) that the cheque so issued has been returned for want of sufficient funds.

In the present case complainant has examined its Authorized Officer as **CW1-Sandip Krishna Kadam (Exh.14)** by filing his examination in chief on affidavit and reiterated all the facts as stated in the complaint. Therefore to avoid repetition I have not re-produced the same facts again. Some material facts of his evidence are, the complainant had sanctioned Housing Loan of Rs.1,50,00,000/- in the year 2014 as requested by accused and her husband. At that time accused agreed the terms and conditions of complainant. Accordingly, she had to repay the amount of loan in 360 equal monthly installments of Rs. 1,57,185/- regularly. However accused failed to repay the loan amount as agreed and on demand issued cheque of Rs. 9,43,110/- dated 30/11/2015. Said cheque was presented for encashment, however it was returned back for the reason “Funds Insufficient”. In spite of that accused did not repay the loan amount, therefore a legal notice was issued on 21/12/2015. However accused failed to comply the same in spite of receipt of notice.

5] In support of its case the complainant has placed on record Resolution of Board of Director (Exh. 22), Power of Attorney (Exh. 23), Loan application form submitted by accused (Exh. 24), acceptance copy (Exh. 25), loan agreement (Exh.26), registered mortgage of property (Exh.27), statement of account of accused (Exh. 28), cheque in dispute (Exh. 29) signed by accused, cheque returned memo (Exh. 30 and 31), legal notice (Exh. 32), acknowledgement (Exh.35) and envelope of notice (Exh. 36).

6] In cross-examination Ld. Defence Advocate conducted cross at length and tried to bring on record the fact that complainant is not Authorized officer of the Company. Further Complainant Company Branch has no power to sanction the loan more than Rs.1,00,00,000/-. In this respect it is to be noted that, there is certified copy of resolution passed by Board of Directors signed by Secretory of the complainant Company(Exh.22) and Verified copy of Power of Attorney(Exh.23) executed by Managing Director in favour of CW1-Sandip Kadam and others representing legal matters and for effecting recovery of loan outstanding from borrowers. Moreover the accused has no dispute regarding borrowing Loan from the complainant company. Accused has borrowed Housing Loan from the complainant company as per their Loan application (Exh.24) and Sanction letter (Exh.25) and agreed terms and conditions of Loan Agreement (Exh.26). All these documents are signed by accused and her husband. In fact in evidence of accused as **AW1-Pradnya Vikas Patil(Exh.43)**, she has come with the defence that they have given cheque to the complainant company at the time of sanctioning Loan towards security of loan amount. So now accused has no right to dispute the power of complainant company to sanction loan amount or its Authorized officer. Therefore I find no substance in the defence of accused in this regards.

7] It is further defence of accused that, as per Loan agreement(Exh.26) only Ahmadabad court has jurisdiction to try their dispute. However it is a criminal case filed under section 138 of Negotiable Instrument Act on the basis of cheque dishonored. There is nothing to show contrary of the same and therefore this court has jurisdiction to try the matter.

8] It is further defence of accused that, account statement of accused(Exh.28) filed on record is incorrect. I have gone through the account statement of accused(Exh.28)along-with certificate available on record. There are detailed collective statement of account from the year 2013-2014 to 2016-2017. It is certified by authorized signatory as per original entries available in their record. It shows that accused was not regular in payment of Loan installment and therefore it is also of no use to the defence.

9] It is further defence of accused that, she did not receive notice and there are no details of the balance installment in compliant, notice and examination-in-chief of the complainant. Further there is no details for which installment the cheque in dispute was issued. Notice issued by complainant(Exh.32) is available on record. It reveals arrears of repayment of Rs.9,43,110/- up to November 2015. No doubt it is odd amount claimed by complainant, however even accused has not given details of arrears amount payable or paid by her. In fact she has no dispute of receipt of loan of Rs.1,50,00,000/- from the complainant company. According to her cross-examination, she and her husband have borrowed this loan amount. She has not maintained her repayment account. Therefore there is nothing to show that accused was not in arrears of cheque amount at the relevant time.

10] Another point needs to be noted that, Notice (Exh.32) was issued to accused and her husband on the same address. Accused has received the same as per Acknowledgment (Exh.35) and Envelope of notice of her husband (Exh.36) returned back with postal endorsement not claimed. Address of accused and her husband given on all the documents including their loan application form available on record and complaint are the same. Even bail application of accused (Exh.06), her bail bond (Exh.07), her driving license as photo Identity available on record bears her same address as given on notice. Moreover she has admitted the same address as her address in her cross-examination. It means that notice was sent on correct address and even she has received the same as per Acknowledgment (Exh.35). Therefore defence of accused in this regards is totally unacceptable.

11] It is further defence of accused that, she has not issued any cheque in dispute in favour of complainant company as alleged. According to accused, she has issued blank signed cheque towards security and complainant has misused it. Admittedly, accused has no dispute regarding issuance of cheque in dispute (Exh.29). It is the cheque of her own account and signed by her. She has simply denied arrears of balance amount, however there is nothing to show about her repayment schedule. Even if it presumes that she has issued blank cheque to the complainant company, still question remains as to why the company misused it. Even she did not raise any objection or lodged complaint anywhere till today against the complainant for misusing the cheque issued by her in spite of notice. Therefore, I find no reason to disbelieve the evidence available on record.

12] As stated earlier according to accused, she was not in arrears as alleged nor she issued the cheque in dispute. However there is nothing on record to show the same. In fact there is disputed cheque dated 30/11/2015 of Rs. 9,43,110/- (Exh. 29). It was dishonored on 02/12/2015 vide Exh. 30, a Notice (Exh.32) was issued on 21/12/2015 and the complaint is filed on 05/02/2016. There is nothing on record showing contrary of the same. If she had any grievance against the complainant, she could have taken action against the complainant. However accused neither replied the notice nor took any action against the complainant. She remained silent till the filing of the present case and till today. This conduct of accused itself shows that, she had no grievance against the complainant or cheque in dispute. Therefore, it can be safely said that, accused has issued the disputed cheque in discharge of legal liability.

13] It is not disputed that, initial burden was on the complainant to prove that, disputed cheque was given by the accused in discharge of legally enforceable debt. The accused admitted her signature on the alleged disputed cheque, but denied balance arrears to her. However there is nothing on record to show the same nor there any reason as to why complainant misused blank cheque signed by accused. Therefore, in view of above-said discussion in my opinion complainant has discharged its initial burden as per presumptions under Section 118, 138 and 139 of N. I. Act. So onus shifted on accused to prove that there was no existence of debt or liability. With due respect it is submitted that case laws citated by defence are not applicable in the fact and circumstances of the present case.

14] No doubt accused is required only to prove by preponderance of probabilities that the defence bears ring of truth. The accused is not required to prove her defence beyond reasonable realm of doubt as is required to be done by the prosecution. However, as I stated earlier accused has failed to rebut the presumption by bringing her probable defence in cross- examination of complainant to believe the existence of circumstances as a prudent person. Therefore, an adverse inference can be drawn against her that, she had no defence to make and therefore she did not give any reply to notice(Exh.32). In evidence accused stated that, bank has taken possession of more property than the loan amount, however there is nothing in detail on record. I therefore, hold that she is liable to pay the amount of disputed cheque to the complainant.

15] There is no inconsistency in the complaint or evidence of complainant. The accused failed to make out her defence of misusing cheque issued by her. Therefore, I hold the complainant has sufficiently discharged its initial burden by deposing that accused was in arrears and she has issued the said disputed cheque for repayment of the same. Accused has failed to rebut the above-said presumptions, for mere a suggestion in that regard or for that matter, a bare denial under Section 313 of the code is not sufficient to rebut the said presumptions. Therefore, complainant has proved that the accused has committed an offence punishable under Section 138 of N.I.Act and answer point no. 1 to 3 in the affirmative. Now I stop to hear accused on the point of sentence.

Pune. **(Madhuri R. Khanwe)**
Dated: 13.02.2019. 31st Jt.Civil Judge Senior Division and
Additional Chief Judicial Magistrate, Pune.

16] Heard accused in person and her Ld. Advocate. Her Ld. Advocate has submitted that, considering her circumstances and being lady leniency be shown to her while imposing sentence.

On the contrary, Ld. Advocate for complainant is absent when called.

17] It is seen that, loan amount was disbursed to accused in the year 2014 and cheque in dispute was issued in the year 2015 and dishonored the same. Since then, period of more than three years are lapsed, thus accused deprived the complainant from getting said amount of cheque. She did not show her bonafides to repay the cheque amount till today. On the contrary, she has denied arrears of any amount recoverable from her. However as stated earlier she has failed to show the same. Therefore, accused is liable to pay the amount of cheque to the complainant. Under these circumstances, I answer above stated points accordingly and in answer to point no.4, following order will meet the ends of justice.

O R D E R

1]	Accused **Mrs. Pradnya Vikas Patil**, Age- 43 Years, R/o- Flat No. 08. 4th Floor, Ashram Apartment PYC Colony, Near Deccan Gymkhana, Pune is hereby convicted under

	section 255(2) of Criminal Procedure Code for the offence punishable under Section 138 of Negotiable Instrument Act and she is sentenced to undergo simple imprisonment for **6 months (In Words Six Months)** and to pay fine of **Rs10,000/- (In Words Ten Thousand Only)**, in default to undergo S.I. for one month.
2]	Accused is directed to pay compensation of **Rs.9,43,110/- (Rupees Nine Lakh Forty Three Thousand One Hundred Ten Only)** to the complainant within **Three months** from this order and compensation if recovered be paid to the complainant after appeal period is over.
3]	The accused to surrender her bail bonds.
4]	Copy of judgment be supplied to accused forthwith, free of cost.
5]	Dictated, typed and pronounced in open court.

Pune.
Dated: 13.02.2019.

(Madhuri R. Khanwe)
31st Jt.Civil Judge Senior Division and
Additional Chief Judicial Magistrate, Pune.

CERTIFICATE

"I affirm that the contents of this PDF file order are same word for word as per original Judgment"

Name of Steno	: Sachin H. Deshmukh
Court Name	: Hon'ble M. R. Khanwe Additional CJM & Spl. 138 N.I.Act Court,Pune
Date	:13/02/2019
Order signed by presiding officer on	:13/02/2019
Order uploaded on	:13/02/2019