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51 CC NI ACT / 11603/2024 Manappuram Finance Ltd Vs. Chaudhary Samir
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07.10.2024

Present: Sh. Dheeraj Kumar Yadav, AR for the complainant.
None for the accused.

Heard on the point of summoning of the accused.

This complaint is filed U/s 25 of Payment & Settlement Systems Act, 2007. It is alleged in the complaint that the accused had issued a ECS mandate in favour of the complainant in discharge of liability. On presentation, the said mandate was returned dishonoured. Thereafter, the complainant made the demand for the payment in terms of ECS mandate amount by giving the statutory notice. The accused failed to make the payment within the prescribed period of 15 days from the receipt of the demand notice. Hence, this complaint.

Complainant has filed on record requisite documents including copy of ECS Mandate, the return memo, legal notice and postal receipt amongst other documents. Complaint, evidence by way of affidavit and documents annexed alongwith carefully perused.

At this point reliance is placed on the observations made by Hon'ble Supreme Court of India in case title A. C. Narayanan vs. State of Maharashtra and Anr. (2014) 11 Supreme Court cases 792, wherein it was held that:

“From a conjoint reading of Section 138, 142 & 145 of NI Act as well as Section 200 of the Code, it is clear that it is open to the Magistrate to issue process on the basis of contents of the complaint, documents in support thereof and the affidavit submitted by the complainant in support of the complainant. Once the complainant files an affidavit in support of the complaint before issuance of process u/s 200 of the Code, it is thereafter open to the Magistrate, if he thinks fit, to call upon the complainant to remain present and to examine him as to the facts contained in the affidavit submitted by the complainant in support of his complaint. However, it is a matter of discretion and the Magistrate is not bound to call upon the complainant to remain present before the court and to examine him upon oath for taking decision whether or not to issue process on the complaint u/s 200 of the Code, it is open to the Magistrate to rely upon the verification in the form of affidavit filed by the complainant in support of the complaint u/s 138 of NI Act. It is only if and where the Magistrate after considering the complaint u/s 138 of the NI Act documents produced in support thereof and the verification in the form of affidavit of the complainant is of the view that examination of the complainant or his witness is required, the Magistrate may call upon the complainant to remain present before the court and examine the complainant and / or his witness upon oath for taking a decision whether or not to issue process on the complaint u/s 138 of the NI Act.”

The same principle can be applied in cases U/s 25 of Payment & Settlement Systems Act, 2007. I have perused the record and heard the counsel for complainant on the point of summoning of accused. Since the present complaint is supported by a duly attested affidavit there is no need to examine the AR of the complainant on oath at this juncture.

From the documents on record and the affidavit filed on behalf of the complainant, prima facie a case under Section 25 of Payment & Settlement Systems Act, 2007, is made out against the accused.

Accordingly, let summons be issued upon accused upon filing of PF/RC/speed post within 15 days.

In case the address of the accused being out of Delhi, the process be issued through Ld. CJM concerned.

As per the guidelines laid down in the case titles as 'Damodar S. Prabhu Vs. Sayed Baba Lal H', AIR 2010 (SC) 1907, Ahlmad is directed to make a mention on the summons (add separate sheet, if required) that the accused can make an application for compounding of the offence at the first or second hearing of the case and if such an application is made, compounding may be allowed by the court without imposing any cost on the accused. Pamphlet containing details regarding court annexed mediation to be enclosed with the summons.

Let summons be also issued upon accused through whatsapp upon providing of such details on affidavit by complainant.

Now to come up for appearance of the accused/settlement, if any/further proceedings on **12.03.2025**.

(Aakanksha)
Judicial Magistrate First Class (NI Act)-07
South West District, Dwarka Courts,
New Delhi/07.10.2024