

Cri. Appeal. 01/20 (CIS 01/20)

Order dated 29.11.2024

Today is fixed for hearing of the appeal

Both the appellant and the respondent have filed appearance through their Ld counsel.

One xerox copy of a document suggesting settlement of loan and no due issued by the respondent Shri Ram Transport Finance Company Ltd is filed by the appellant. Let it be kept in the record.

On the previous occasion the authorised representative of respondent Shri Ram Transport Finance Company Ltd had filed a declaration that the complainant company of CR case 67 of 2015 at JM 3rd court Alipurduar have received the entire cheque amount.

Now the Hon'ble Apex Court in Damodar S Prabhu vs Sayed Babalal H 2010(5) SCC 663 has laid down the guideline to be followed in respect of compounding offences under section 138 of NI Act.

It is necessary to point out the observations made by the Hon'ble Apex Court in the aforementioned judgment:

"This is clearly a situation that is causing some concern, since Section 147 of the Act does not prescribe as to what stage is appropriate for compounding the offence and whether the same can be done at the instance of the complainant or with the leave of the court."

"12. It is true that the application under Section 147 of the Negotiable Instruments Act was made by the parties after the proceedings had been concluded before the Appellate Form. However, Section 147 of the aforesaid Act does not bar the parties from compounding and offence under Section 138 even at the appellate stage of the proceedings".

"13. It is quite obvious that with respect to the offence of dishonour of cheques, it is the compensatory aspect of the remedy which should be given priority over the punitive aspect."

We direct that the following guidelines be followed :

THE GUIDELINES

(i) In the circumstances, it is proposed as follows:

(a) That directions can be given that the Writ of Summons be suitably modified making it clear to the accused that he could make an application for compounding of the offences at the first or second hearing of the case and that if such an application is made, compounding may be allowed by the court without imposing any costs on the accused.

(b) If the accused does not make an application for compounding as aforesaid, then if an application for compounding is made before the Magistrate at a subsequent stage, compounding can be allowed subject to the condition that the accused will be required to pay 10% of the cheque amount to be deposited as a condition for compounding with the legal Services Authority, or such authority as the Court deems fit.

(c) Similarly, if the application for compounding is made before the Sessions Court or a High Court in revision or appeal, such compounding may be allowed on the condition that the accused pays 15% of the cheque amount by way of costs.

(d) Finally, if the application for compounding is made before the Supreme Court, the figure would increase to 20% of the cheque amount .

"17. We are also conscious of the view that the judicial endorsement of the above quoted guidelines could be seen as an act of judicial law-making and therefore an intrusion into the legislative domain. It must be kept in mind that Section 147 of the Act does not carry any guidance on how to proceed with the compounding of offences under the Act."

" The graded scheme for imposing costs is a means to encourage compounding at an early stage of litigation".

Thus the litigating party herein the appellant and the respondent are directed to act according to the dictum of law and as per the guidelines laid down by the Hon'ble Apex Court in Damodar S Prabhu vs Sayed Babalal H 2010(5) SCC 663 as discussed herein above.

Fixing 07.01.2025 for hearing of appeal and taking proper step by the parties.

Dictated & Corrected by me,

Addl. Dist. & Sessions Judge,
FTC-I, Alipurduar.

Additional Dist. & Sessions Judge,
1st Fast Track Court, Alipurduar.