

C Case No-545 of 2015

Order dated: 20.09.2016.

The complainant in order to mark presence before this court has filed hazira. As stipulated by the previous order today is fixed for S/R and hearing.

Nobody has appeared today. Track report from the India Post Official website has been submitted by the ld lawyer for the complainant.

Ld lawyer for the complainant submitted that the petition praying for condonation of delay that has occasioned may be heard and disposed off as the accused person is intentionally avoiding service.

At the outset I must hasten to articulate that this is a case instituted under section 138 of the Negotiable Instrument Act. Sections 143 to 147 have been inserted in the said Act by Amendment with effect from 06-02-2003. Section 144 of the Negotiable Instrument Act (as amended) provides mode of service of summons in cases of this nature. The section runs in the following lines.

“144. Mode of service of summons

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, (2 of 1974) and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgment purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.”

Therefore from the bare reading of the section it is clear that this court is empowered to issue a copy of summons upon the accused person by speed post. Here in this case a postal receipt has been filed as well as the track reports. It must be mentioned here that the mode of service of summon as provided by Section 144 of the Negotiable Instruments Act, 1881 is a different from section 62 of the Criminal Procedure Code 1973 and by the use of the word “Notwithstanding” the Negotiable Instruments Act 1881 has provided for an alternative mode of service. Therefore section 62 of the Criminal Procedure Code would not be attracted for the purpose of cases like this. Any other interpretation would not hoist the cause of speedy disposal of cases of this nature and that would obviously transgress the clear intention of the legislature. Moreover the complainant cannot be saddled with the duty when indeed summons were sent in the right address and the presumption under section 27 of the General Clauses Act militates against the accused person.

On repeated calls none appears and none moves for the person arrayed as accused in the written complaint. It is now 01.25 PM.

On call ld lawyer for the complainant submitted that the authorized representative of the complainant bank was ill and for that reason the case could not be filed within the stipulated time. Ld lawyer for the complainant during the course of his submission canvassed that the delay that has occurred in filing this case is totally unintentional, bonafide and this court must condone the delay and proceed against the accused persons as per law. In order to amplify her claim he relied on Section 142 (b) of the Act and submitted that this court has every authority to condone the delay that has occurred in this case.

Heard ld lawyer for the complainant. Ld lawyer for the complainant has vehemently stressed upon Section 142 of the Negotiable Instrument Act as amended. The Section runs in the following lines:

“ **142. Cognizance of offences:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974).-

(a) No court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) Such complaint is made within one month of the date on which the cause of action arises under clause (C) of the proviso to section 138:

Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period.

(c) No court inferior to that of a Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.”

Therefore it is axiomatic that Section 142(b) of the Negotiable Instruments Act 2015 requires that the complaint is to be made within one month of the date on which the cause of action arises under Clause (c) of the proviso to Section 138 of the Negotiable Instruments Act. It is also worth mentioning that the proviso to Section 142, which has been incorporated by Act of 2002, authorises the Court to take cognizance on a belated complaint if the complainant satisfies the Court that "he had sufficient cause for not making a complaint within such period." While interpreting the clause 'sufficient cause' it must be borne in mind that the Court should not adopt an interpretation which helps a dishonest evader and clips payee as that would defeat the very legislative measure. Therefore the terminology used in the section calls for a liberal and object oriented interpretation.

The general rule of limitation is based on the Latin maxim : *vigilantibus, et non, dormientibus, jura subveniunt* (the vigilant, and not the sleepy, are assisted by the law). From the factual exposition of this case it is limpid that the complainant cannot be said to sleeping over its right to initiate the case on accrual of cause of action, especially when there is no denial from the part of the accused person.

In the lights of the above observation I am thoroughly satisfied that the cause advertised by the complainant in the petition is sufficient as it was beyond the control of the complainant and appears to me as bonafide.

Being pioneered by the above discussion and observation I have no dichotomy to conclude that the complainant has sufficient and justifiable reason for not filing the case within time and hence the delay that has occasioned is required to be condoned. This court must proceed with case as per the provisions of law enumerated in the Negotiable Instruments Act.

Fix 20-12-2016 for S/A.

Typed by me;

Addl. Chief Judicial Magistrate

Bidhannagar