

before the learned appellate court when the dispute in the present case was referred to arbitration, there was no valid reference since the same was made without the order of the Court. Here reference may be made to the following observations of the Supreme Court in the case of *Narain Dass* (supra).

“It is always open to parties to refer a dispute to arbitration without the intervention of the court. In case the suit is pending in respect of the subject matter of the dispute, there can be no valid reference during the pendency of the suit, to arbitration without the order of the court. The underlying reason for that is to avoid conflict of jurisdiction by both the court and the arbitrators dealing concurrently with the same dispute.”

(11) In the present case since the appeal was still pending and the dispute was referred to arbitration without the order of the Court, I am of the opinion that the reference itself was not valid. Besides since the learned appellate court only dismissed the appeal of the petitioners as withdrawn but did not disturb the judgment and decree passed by the learned trial court in 1987, I do not find any substance in this petition. Accordingly, the petition is dismissed. Parties are, however, left to bear their own costs.

*J.S.T.*

*Before Dr. Sarojnei Saksena, J*

RAVINDER KUMAR MAHAJAN,—*Petitioner*

*versus*

SOHAN LAL AND ANOTHER,—*Respondents*

*Crl. R. 629 of 1997*

The 3rd April, 1998

*Negotiable Instruments Act, 1881—S.138—Cheque dishonoured—Notice demanding payment of cheque within 7 days—Statute requiring 15 days period for payment—Notice for 7 days if invalid.*

*Held that*, even if the complaint gave a notice demanding payment of the cheque amount within seven days that will not invalidate the notice under Section 138(b) of the Act as the respondent-accused were entitled to make the payment within 15 days of the receipt of this notice. Resultantly, this revision is allowed. Impugned order of Addl. Sessions Judge is hereby set aside.

(Para 18)

Sumeet Mahajan, Advocate for the Petitioner

H.S. Bhullar, Advocate for the Respondant

### JUDGEMENT

*Dr. Sarojnei Saksena, J.*

(1) Petitioner-complainant has filed this revision against the order dated 6th March, 1997 passed by Shri S.K. Garg, Addl. Sessions Judge, Gurdaspur whereby lower Court's order summoning the accused for an offence under Section 138 of the Negotiable Instruments Act, 1881 (for short the 'Act' was set aside and his complaint was dismissed.

(2) The short point involved in this revision is whether notice issued under Section 138(b) of the Act specifying the period of seven days for making payment of the cheque amount can be said to be a valid notice under the said provision and on the basis of such notice whether complaint is entertainable in the Court of law.

(3) The brief facts of the case were that respondent-accused issued a cheque of Rs. 53,400 in favour of the petitioner-complainant on 15th August, 1991. The complainant presented this cheque in the Bank which was dis-honoured and a note to that effect was issued to the complainant by the Bank on 10th February, 1992. Thereafter, on 14th February, 1992 the complainant gave notice to the respondent-accused asking him to return the amount and make the payment by 27th February, 1992.

The complainant filed a complaint under Section 138 of the Act against the respondent. In the complaint it was pleaded that he gave notice to the accused respondent specifying seven days period to make the payment of the amount mentioned in the cheque. When the accused-respondents were summoned by the lower Court, they filed an application under Section 258 Cr. P.C. praying that because of invalidity of the notice sent to them under Section 138(b) of the Act, the complaint is liable to be quashed and they are entitled to be discharged. It is also averred that notice was not served on one of the accused. The learned Sub Divisional Judicial Magistrate, Pathankot,— *vide* his order dated 8th June, 1995 dismissed the application.

(4) Aggrieved by the aforesaid order, the accused-respondents filed

revision which was heard by Shri S.K. Garg, Addl. Sessions Judge, Gurdaspur who,—*vide* his order dated 28th March, 1997 held that there was no illegality in this case on the count that notice under Section 138(b) of the Act was served only on one accused but with regard to the other contention, relying on *M/s Embee Textiles Ltd. and another v. Sadhu Ram*, (3-A), wherein notice was given directing the accused to make payment within 30 days was held invalid, held that notice sent by the complainant petitioner to the respondents-accused giving only 7 days time to make the payment was not in accordance with the provisions of Section 138(b) of the Act and on that account, the summoning order was held illegal and resultantly the complaint was dismissed.

(5) For ready reference, Section 138 of the Act is reproduced as under:—

“138. Dishonour of cheque for insufficiency, etc. of funds in the account. Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall, without prejudice to any other provision of this Act, be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque, or with both :

Provided that nothing contained in this section shall apply unless—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.”

(6) During arguments, the petitioner’s learned counsel relied on *Samant v. K.G.N. Traders* (4), and *German Remedies Ltd. v. Harish C. Duggal Agencies* (5), and strongly convassed that under Section 138(b) of the Act, 15 days time is given to the accused person to make the payment. If notice is given of longer period then it can be said that notice is invalid but if it is of shorter period, the accused persons are entitled to make the payment within 15 days of the receipt of such notice. Therefore, on this ground that impugned notice was given to the accused persons to make payment within seven days, it cannot be said that the complaint is liable to be quashed.

(7) The respondents learned counsel relying on *Sadhu Ram’s case (supra)*; *A.C. Raj v. M. Rajan Ezhakudivila Veedu* (6) and *Gopa Devi Ozha v Surjit Paul* (7), vehemently argued that learned Revisional Court has rightly dismissed the complaint under Section 138(b) of the Act, notice is required to be given of 15 days duration. If it is less or more of this requisite period then the notice is invalid and on that basis the complaint cannot be entertained by the Court.

(8) After hearing the rival contentions, in my considered view, the learned Addl. Sessions Judge has fallen into an error in dismissing the complaint.

(9) In *Sadhu Ram’s case (supra)*, notice of the duration of 30 days was given to the drawer to make the payment against the statutory requirement of 15 days. A Single Bench of this High Court has observed in para 9 of the judgement that :—

“...the petitioners were asked to make the payment within 30 days so notice did not conform to the specifications of statute. In interpreting a penal provision it will not be appropriate to give an extended meaning to the plain words of the Section.”

Therefore, on this count, notice was held illegal.

(10) In *Gopa Devi’s case (supra)*, it is held :

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- (4) 1995 I.S.J. (Banking) 35  
(5) 1997 (1) R.C.R. 412  
(6) 1997 CrL. L.J. 1939  
(7) 1997 I.S.J. (Banking) 542

“So, the notice need to be given demanding the cheque amount. If any bigger amount or small amount is mentioned that will create difficulty to the drawee to know how much amount he has to pay. That makes notice insufficient and vague and notice will become illegal.”

(11) In *German Remedies Ltd.'s case* (supra), the amount covered by the cheque was not mentioned in the notice under Section 138(b) of the Act. However, the amount together with interest, without specifying rate of interest and amount of interest was claimed in the notice. On these facts, it was held that such a notice cannot be treated as notice contemplated by Section 138(b) of the Act and the accused is entitled to acquittal for want of proper notice.

(12) Thus, all these three cases are distinguishable on facts. In this case, the complainant has not demanded the amount covered by the cheque alongwith interest. He only demanded amount for which cheque was issued by the respondent-accused. In this case, neither smaller amount nor bigger amount was demanded by the complainant-petitioner in the notice under Section 138(b) of the Act. Therefore, *Gopa Devi's case* (supra) is also distinguishable on this account.

(13) So is the case with *Sadhu Ram's case* (supra). In that case drawee sent 30 days notice to drawer to make payment which was against the statutory requirement of 15 days. Section 138(b) of the Act reproduced above shows that drawer of the cheque is entitled to make the payment within 15 days of the receipt of the notice of demand.

(14) In *Samant's case* (supra), the Karnataka High Court has held:—

“Notice issued demanding the payment within a week—Whether notice Bad ? No. It is not necessary for the payee to specify any time in the notice for making payment. Clause (b) of the proviso does not stipulate that the payee or the holder in due course who issues the notice should give any specific time for the drawer to pay the amount. The sub clause (c) of the proviso only stipulates that if the drawer of the cheque fails to make the payment of amount to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice, then the offence would be committed. The cause of action for filing the complaint would arise after the completion of 15 days from the date the drawer receives the notice and fails to pay the amount within that period.”

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(15) In *German Remedies Ltd.'s case* (supra) the payee sent demand notice to the drawer of the cheque demanding payment within 11 days. A single Bench of the Delhi High Court held that such a demand notice was valid because drawer had a right to make payment within 15 days. The drawer cannot take advantage of the complainant having restricted the period to 11 days. Letter requiring the accused to make payment was equivalent to legal notice.

(16) Madras High Court has held in *Dickson Prem Rai v. R. Manoharan* (8). Cases 245 that if notice of 7 or 10 days is given for payment under Section 138(b), that duration mentioned in the notice is irrelevant if other legal requirements are complied with.

(17) In *Manivannan v. Ever King Garments* (9), notice was issued under Section 138 (c) giving three days time to make the payment. The Madras High Court held that this was not a ground to quash the complaint.

(18) Thus in my considered view even if the complainant gave a notice demanding payment of the cheque amount within seven days that will not invalidate the notice under Section 138(b) of the Act as the respondent-accused were entitled to make the payment within 15 days of the receipt of this notice. Resultantly, this revision is allowed. Impugned order of Addl. Sessions Judge, Gurdaspur, is hereby set aside.

(19) Respondents are directed to appear before the trial Court on 17th April, 1998. The trial Court is directed to proceed further in the matter in accordance with law.

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S.C.K.

*Before N.K. Sodhi, J*

PARAMJIT RAI,—*Petitioner*

*versus*

THE STATE OF PUNJAB AND OTHERS,—*Respondents*

*CWP 259 of 1997*

30th June, 1998

*Constitution of India, 1950—Arts. 14 and 16—Punjab State Tubewell Corporation Employees Service Bye-laws, 1977—Bye-laws 8 and 9—Bye-laws providing different sources of recruitment—No quota*

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(8) (1995) 83 Company Cases 245

(9) (1995) 83 Company Cases 473