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Analysing developments impacting business

PAYMENT AGAINST AN AGREEMENT TO SELL IS A DULY ENFORCEABLE DEBT UNDER THE NEGOTIABLE INSTRUMENTS ACT

3 April 2019

The division bench of the Supreme Court of India (Supreme Court) comprising of Hon'ble Justice Dr D.Y. Chandrachud and Hon'ble Justice Mr Hemant Gupta, in its judgment dated 13 March 2019 in *Ripudaman Singh v Balkrishna*, has *inter alia* held that a payment which is made in pursuance of an agreement to sell is a payment made in pursuance of a duly enforceable debt or liability for the purposes of Section 138 of the Negotiable Instruments Act, 1881 (Act).

Brief Facts

The Appellants, i.e. the Sellers, in the present appeals before the Supreme Court had entered into an agreement to sell with the Respondent, i.e. the Buyer, for sale of certain agricultural land. The Respondent had issued two post-dated cheques in favour of the Appellants in order to pay part of the consideration for such sale. Upon depositing the two cheques for payment, the cheques were returned unpaid by the banker with the remark "insufficient funds". As a result, the Appellants instituted complaints under Section 138 of the Act. The Respondent thereafter filed separate applications seeking discharge in the said complaints, which were dismissed. Subsequently, the Respondent filed a petition under Section 482 of the Code of Criminal Procedure, 1973 (CrPC) before the Hon'ble High Court of Madhya Pradesh (High Court), in which the impugned order and judgment allowing the complaint of the Respondent was passed.

Ruling of High Court

The High Court observed that in the present case, the cheques were not issued to create any liability or debt but for the payment of balance consideration for sale of land by Appellants to the Respondent. As such, the High Court held that the Respondent did not owe any money to the Appellants, and accordingly quashed the complaints under Section 138 of the Act.

Reversal of Ruling by Supreme Court

The Supreme Court disagreed with the view of the High Court that the cheques were not issued to create any liability or debt, but "only" for the payment of balance consideration and that in consequence, there was no legally enforceable debt or any other liability. The Supreme Court, in fact, held that though it is well settled that an agreement to sell does not create any interest in immoveable property, such an agreement nonetheless constitutes a legally enforceable contract between the parties to it and accordingly, a payment which is made in pursuance of such an agreement would constitute payment made in pursuance of a duly enforceable debt or liability for

the purposes of Section 138 of the Act. In view of the aforesaid ruling, the impugned order and judgment of the High Court was set aside. However, the Supreme Court clarified that it was not expressing its views on the merits of the issues which may arise at the stage of trial.

Comments

To make out an offence under Section 138 of the Act, a complainant has to prove *inter alia* that the accused person had a legally enforceable debt or liability to the complainant. By its ruling in the present case, the Supreme Court has concretized the principle that an agreement to sell constitutes a legally enforceable contract between the parties to it and as such, any payment of consideration in relation thereto shall be considered payment made in pursuance of a duly enforceable debt or liability and will not be outside the purview of Section 138 of the Act. In other words, irrespective of whether it creates any transfer of interest, if a legally enforceable contract obligates a party to pay, the payment shall be construed as being in pursuance of a duly enforceable debt or liability and shall be sufficient to come under the purview of Section 138 of the Act. This decision may set a precedent for vitiating the scope for a party that tries to abandon its contractual obligations of payment by taking the technical defence that there is no subsisting liability or debt accruing to a party that has entered into a mere agreement to sell, and not into a sale deed in furtherance of the agreement to sell.

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