

IN THE HIGH COURT AT CALCUTTA

CRIMINAL REVISIONAL JURISDICTION

Before:

THE HON'BLE MR. JUSTICE JAY SENGUPTA

C.R.R. 2682 OF 2019

TITEC FINANCE LTD.

VS.

THE STATE OF WEST BENGAL & ORS.

For the Petitioner:

Mr. Pawan Kumar Gupta
Ms. Soma Chakraborty

For the Opposite Party No.3 & 4:

Mr. Karan Dudhwewala

Heard on: 21.01.2020

Judgment delivered on: 21.01.2020

JAY SENGUPTA, J:

This is an application praying for expeditious disposal of a proceeding in C. Case No. 10075 of 2014, presently pending before the learned Metropolitan Magistrate, 18th Court, Calcutta, under section 138 read with section 141 of the Negotiable Instruments Act.

The complainant/petitioner has prayed for expeditious disposal of the proceeding and has pointed out that the accused directors of the company, being the present opposite party nos. 3 and 4, are not representing the accused company, the opposite party no.2, in this case although they are being represented in their individual capacities as directors before the learned trial court.

Upon a direction to file an affidavit stating about their relation with the accused company, the present opposite party nos. 3 and 4 filed an affidavit dated 15.01.2020. In the said affidavit they merely stated that it was a matter of public record that they were the directors of the accused company and the present status of the accused company was active. They further stated that there had been no business transactions of purchase and sale in the accused company for the last few years.

Learned counsel appearing for the complainant/petitioner submits as follows. The accused/opposite parties have devised an ingenious ploy to delay the proceeding and to keep apparent loopholes in the whole process so that they can enjoy the benefits of the same at a later date. They have refused to represent the accused company before the learned trial court as well as before this Court. This is despite the fact that till a certain point of time, the company was represented by one of the authorized representatives under section 305 of the Code. It is apprehended that the petitioner would either take a plea that since

the company was not an accused, the proceeding would be bad so far as the individual directors are concerned or they might claim that their individual properties could not be subjected to attachment. The accused should not be allowed to adopt unscrupulous means to protract the proceeding and evade liability. Referring to section 317(2) of the Code, it is submitted that the trial may be split up. Reference is also made to section 305(6) of the Code and it is submitted that since the accused company was represented at a particular point of time, it will be open to the learned trial court to decide whether such person who had represented the company would be treated as a representative of the said company or not. A direction for expeditious disposal of the case with appropriate indications in respect of the provisions of law canvassed above would be required for the ends of justice.

Learned counsel appearing for the opposite party nos. 3 and 4 submits as follows. The stand taken in the affidavit filed on behalf of the opposite party nos. 3 and 4 is reiterated that the accused company is still an active one and the opposite party nos. 3 and 4 are the directors in the said company. Yet, the said opposite parties refuse to represent the accused company/opposite party no.2 in this case either before this Court or before the learned trial court. It is also admitted that the company is a private limited one and the opposite party nos. 3 and 4 are the only directors of the said company. Reliance is placed on *Aneeta Hada Vs. Godfather Travels and Tours Private Limited*, (2012) 5 SCC 661 and it is submitted that the ratio that a proceeding under section 138 read with section

141 of the Negotiable Instruments Act would not lie against the individual directors if the company is not made an accused does not affect the present proceeding. In the present proceeding, the company was made an accused by the complainant. However, since it is not being represented, the proceeding could continue against the rest of the accused i.e., the directors of the company.

I have heard the submissions of the learned counsels representing the parties and have perused the revision petition.

It seems that the accused would like us to believe in the words mouthed by a character of Charles Dickens, albeit contingently, that “law is a ass”. But, I refuse to believe this. The intellect and the hard work of the framers of our laws are not so fragile as could be so easily outwitted by presumptuous manipulators trying to evade due process of law.

First, I would like to quote sub-sections 3 and 4 of section 305 of the Code, which is as follows:

“(3) Where a representative of a corporation appears, any requirement of this Code that anything shall be done in the presence of the accused or shall be read or stated or explained to the accused, shall be construed as a requirement that that thing shall be done in the presence of the representative or read or stated or explained to the representative, and any requirement that the accused shall be examined shall be construed as a requirement that the representative shall be examined.

(4) Where a representative of a corporation does not appear, any such requirement as is referred to in sub-section (3) shall not apply.”

It is germane to mention here that there are certain requirements of a criminal trial like recording of plea under section 251 of the Code, the taking of evidence in the presence of accused under section 273 of the Code and the examination of the accused under section 313 of the Code.

However, a corporation or a company, being a juristic entity, has to be represented by an individual in a trial. In the instant case, the accused company is a private limited company and the opposite party nos. 3 and 4 are its only two directors. In spite of being represented under Section 305 of the Code earlier, the company subsequently stopped being represented by anyone. In spite of enquiry by the Court, the only two directors of the said private limited company refused to represent the company in the trial or before this Court. Therefore, it is abundantly clear that in spite of having due notice, the company failed to represent itself before the learned trial court or before this Court. This is a fit case where the corporate veil should be lifted.

Section 305(3) of the Code provides that where a representative of the corporation appears then any requirement of the Code that anything shall be done in presence of the accused or explained to the accused shall be done in the presence of such representative. This would, therefore, include the stages of taking plea, recording of evidence, examination of the accused or even delivery of

judgment. Sub-section (4) of section 305 provides that where a representative of a company does not appear, any such requirement shall not apply.

Therefore, if a company refuses to be represented by anyone despite notice, in a trial one can fairly invoke section 305(4) of the Code and in such event, a trial need not necessarily be split up in terms of section 317(2) of the Code.

In the facts and circumstances of the present case, I find it appropriate to pass a direction upon the learned trial court to conclude the proceeding as expeditiously as possible without granting any unnecessary adjournment to any of the parties, preferably within six months from the next date of hearing. The trial need not be split up. The learned trial court is directed to proceed against all the accused, even against the accused company in terms of section 305(4) of the Code.

With these observations, the revisional application is disposed of.

Urgent photostat certified copy of this order may be supplied to the parties expeditiously, if applied for.

(Jay Sengupta,J.)

SM