* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% ***Pronounced on: 28th June, 2025***

\+ **CRL.APPEAL 657/2025**

M/S Kushal InfraProject Industries India Ltd
OFFICE AT 209, SECOND FLOOR,
16-A, UDAY PLAZA UDAY PARK,
NEW DELHI - 110049

.....Appellant

Through: Mr. Rajat Wadhwa, Mr. Pratham Sharma, Mr. Gurpreet Singh, Ms. Anisha Rastogi, Mr. Manish Kumar & Mr. Harender Singh, Advocates

versus

1. **M/S. R.L. Varma & Sons (HUF)**
A-123, New Friends Colony

2. **Sh. R.L.Varma**
M/S R.L.Varma & Sons (HUF)
A -123 New Friends Colony

3. **Dhruv Varma**
M/S R.L. Varma & Sons (HUF)
A-123, New Friends Colony

4. **Ms. Aruna Varma**
M/S R.L. Varma & Sons (HUF)
A-123, New Friends Colony

.....Respondents

Through: Respondent No. 2 in person

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. Criminal Appeal under Section 378 (4) Cr.P.C. has been filed by the Complainant *M/s. Kushal Infra Project Industries Pvt. Ltd.* to challenge the judgment dated 23.02.2019 by which the Learned MM has dismissed his Criminal Complaint under Section 138 and 141 read with Section 142 Negotiable Instruments Act.

2. It is submitted that the Complainant Company incorporated under the Companies Act is dealing business of Real Estate and Kuhsal Rana, Director of the Company, has been duly authorized to institute the Complaint under S 138 NI Act, *vide* Minutes of the Meeting dated 10.01.2011.

3. The Complainant asserted that in November, 2008 the Accused no.1 who is a Hindu Undivided Family (HUF) of which the Respondents no.2 to 4 are the members, agreed to sell their House bearing no.8-1/23, New Friends Colony, New Delhi and property at 4th Floor, Gopal Das Tower, Connaught Place, New Delhi, vide a written Agreement for which the Complainant made a payment of 1,50,00,000/-.

4. In July, 2009, the Agreement was cancelled vide Cancellation Agreement dated 04.07.2009, since the Respondents suddenly and arbitrarily refused to honour the Agreement to Sell on the pretext that the value of the properties had increased. The parties entered into Cancellation Agreement dated 04.07.2009 wherein it was stipulated that the accused persons had returned the amount of Rs.3 crores vide two Cheques dated 30.07.2019 and 11.08.2019 for Rs.1.5 crores each.

5. These cheques were subsequently replaced on 22.12.2010 by the Respondents in respect of which Letter dated 22.12.2010 was executed and fresh Cheque No.200337 for Rs.1.5 crore was issued as a consolidated instrument for return of the money to the Complainant. However, on presentation the cheque was dishonored for "*insufficient funds"* as per Return Memo dated 01.01.2011 of Royal Bank of Scotland.

6. Legal notice dated 14.01.2011 was issued by the Complainant, but the demanded amount was still not paid. Consequently, the Complaint under 138 NI Act was filed.

7. The ***learned MM in his impugned judgment dated 23.02.2019*** patently gave an erroneous interpretation of the factual matrix. Notice under Section 251 NI Act was framed on 21.12.2011 in response to which *Respondent no.3 Dhruv Varma* claimed that cheque was issued as a Security cheque, but was not intended to be presented for encashment.

8. *The Respondent no.2 R.L. Varma* took the plea that the business was being looked after by his son Dhruv Varma / Respondent no.3 and he had no information about the transactions between the Respondent no.3 and the Complainant. He admitted his signatures on the cheque, but stated that he had done so on the instructions of his son Dhruv Varma and that he had no personal liability.

9. *Notice under Section 251* Cr.P.C. was given to the *Respondent no.4 Aruna Varma on 31.01.2012* wherein she also took a similar plea as Respondents No.3 that the impugned cheque was intended to be a security cheque and was not to be presented to the bank for encashment.

10. The Complainant Kushal Rana, in support of his case appeared as CW1 and deposed about the contents as stated in the Complaint.

11. In defense, the ***Respondents no.2 R.L. Varma; Respondents No 3 Dhruv Verma & Respondents No.4 Aruna Verma*** examined themselves as defence witnesses wherein they reiterated their defense as stated in their response to Notice under Section 251 Cr.P.C.

12. ***Learned MM*** considered the respective evidence of the Complainant and the Respondents to conclude that the alleged admitted liability was of Rs.75. Lacs and the Complainant had failed to prove an existing liability of Rs.3 crore or that the impugned cheque of Rs.1.5 crore had been issued in discharge of existing liability. It was further observed that the earlier Agreement for purchase of the two properties of the Respondents was not produced or proved by any cogent evidence. Further, even if the admission of the Respondents of there being an outstanding loan of Rs.75 lacs was considered, then too the impugned cheque was for Rs.1.5 crore, which was much more than the admitted liability. Thus, it was held that for want of evidence, it cannot be held that the impugned cheque was issued in respect of existing legal liability. ***Accordingly, Complaint under Section 138 was dismissed vide Order dated 23.02.2019.***

13. Aggrieved by the dismissal of the Complaint, the present Appeal has been filed.

14. The ***grounds of challenge*** are that under Section 139 read with 118 NI Act where the cheque has been issued under the signatures of the drawer, there is a presumption that the holder of the cheque has received it in discharge of whole or part of the debt or liability.

15. Reliance has been placed on *Bir Singh v. Mukesh Kumar*, Criminal Appeal Nos. 230-231 of 2019, decided on February 6, 2019 wherein the Apex Court had observed that the existence of a fiduciary relationship between the payee of a cheque and the drawer, would not disentitle the payee to the benefit of presumption under Section 139 NI Act. The burden of proof with respect to the nature of the Instrument lies on the accused and in the absence of any reasonable cause, it should be believed that the Instrument was given in discharge of a debt and liability.

16. It is asserted that the Learned MM has failed to appreciate the admissions of the Respondents. There was a strong presumption in favour of the Appellant and the burden of rebuttal was on the Respondents, which they had failed to discharge.

17. It is further contended that the Learned Trial Court failed to appreciate that the Respondents had arbitrarily cancelled the Agreement for Sale of two properties executed between the parties in November, 2008 vide Cancellation Agreement dated 04.07.2009. Consequently, disputed cheques had been handed over to the Complainant in discharge of liability under the Cancellation Agreement.

18. Reliance has been placed on the judgment of the Supreme Court in *Rohit Bhai Jivanlal Patel v. State of Gujarat and Anr.*, in Criminal Appeal no. 508 of 2019 decided on 15th March, 2019.

19. It is claimed that the Learned MM has failed to recognize the *doctrine of preponderance of evidence*. Even though the Respondents are entitled to point out factual infirmities in the testimony of the Complainant, but the evidence and the documents of the Complaint must be judicially scrutinized

and if the preponderance of evidence is felt to be greater than 50% of the chance of the harm being caused to the Complainant, it may be held to be *mala fide* actions of the accused. The unwavering certainty that is in consonance with the relevant facts and the evidence adduced by the Complainant coupled with the presumption under 139 NI Act, shifted the burden on the Respondent/Accused which they have miserably failed to discharge.

20. Reliance has been placed on *Syad Akbar vs. State of Kamataka* AIR 1979 SC 1848 and *State of Rajasthan vs. Om Prakash* AIR 2007 SC 2257, State of *U.P. vs. M.K. Anthony*, AIR 1985 SC 48.

21. It is submitted that the ***Cancellation Agreement Ex.CW1/D5*** has not been considered in the right perspective, as it contained an acknowledgement of a debt of Rs.3 crores. Unsubstantiated contentions of the Respondents that the disputed cheque was a Security deposit, has been erroneously accepted by the Learned MM. It has not been considered that the impugned cheque admittedly had the signatures of the accused persons and no evidence has been led to support the deceptive and ludicrous claim that his signatures were taken under coercion. They have not been able to prove that this cheque of Rs.75 lac was in fact, a Security cheque.

22. The Learned MM therefore, fell in error in appreciating the evidence of the parties and dismissing the Complaint. It is submitted that the impugned judgment be set aside and the Respondents be convicted under 138 NI Act.

23. ***The Respondents in their detailed Reply*** have submitted that the Complainant alleged that he had advanced a sum of Rs.1.50 crores out of

which Rs.75 lac was given by cheque and Rs.75 lacs in cash, but no evidence has been brought on record in regard to the alleged payment of Rs.75 lakhs in cash. Furthermore, the Complainant admitted in his cross-examination that he did not remember if this alleged loan of Rs.75 lakhs was reflected in the ITR Returns. Moreover, the Complainant had alleged that there was an *Agreement to Sell in respect of two properties* of the Respondent, entered in November, 2008 but the not produced the Agreement to Sell on the pretext that the original Agreement was torn after the execution of subsequent documents.

24. The Complainant has relied on the Cancellation Deed Ex.CW1/DX5 claiming it to be executed in July, 2009, *but is an undated document.* This alleged Cancellation Agreement of July, 2009 was filed only on 7th February, 2013 and not with the Complaint filed in February, 2011. This document does not contain any reference to the earlier alleged Agreement to Sell of which it was the successor document. Pertinently, in this Cancellation Agreement, reference is made to certain properties without specifying the details thereof. It is not signed by Shri R.L.Varma, Karta of R.L. Varma & Sons HUF nor was there any authority with any of the members of HUF, to sign this document. This fact has been admitted by the Complainant in his cross-examination.

25. In the case of *Subhodkumar & Ors vs. Bhagwant Namdeorao Mehetre & Ors* 2007 INSC 71 decided on 25th January, 2007 the Supreme Court observed that the Karta of a HUF occupies a unique position which is superior to other members. He is entitled to manage the properties of the family.

26. It is submitted that Complainant was a Company which was mandatorily required to maintain Books of Account and Balance Sheet and file its ITRs. The ITRs of Assessment Year 2009-10 along with Balance Sheet as on 31.03.2009 as produced by the Complainant confirm that his claim of advancing Rs.1.5 crore as loan is false.

27. The ITRs of 2010-11 along with Balance Sheet as on 31.03.2011, has not been filed by the Complainant which would have provided veracity to the claim of the Complainant of having advanced Rs.1.5 crores to the Respondents. These facts were admitted by the Complainant, who in his cross-examination stated that these documents were irrelevant.

28. Reliance has been placed on *M.S Nayanaa Menon @ Mani vs. State of Kerala & Anr*, (2006) 6 SCC 39 wherein it was held that where the Books of Account have not been produced deliberately, an adverse inference has to be drawn against the Respondents.

29. The Respondents in their respective testimony had taken a defence that no Agreement to Sell was entered between the Parties in November, 2008. Moreover, Rs.1.50 crores were never given by the Complainant to the Respondents. Admittedly, the amount of Rs.75 lakhs that was advanced by the Petitioner by cheque was a loan relating to another transaction and has no connection with the alleged transaction of Agreement to Sell the property. The alleged sum of Rs.75 lakhs in cash was never received by them. By using coercive method, the Complainant got some blank paper signed on which Agreement dated July, 2009 has been executed.

30. It is submitted that initial burden, presumption and rebuttal under Sections 118 and 139 NI Act has been duly discharged by the Respondents

and that it was for the Appellants to have prove their case of there being legally enforceable debt or liability.

31. Reliance has been placed on *M.S. Narayana Menon @ Mani vs. State of Kerala & Anr*, (2006) 6 SCC 39, *M/s. Kumar Exports v. M/s. Sharma Carpets* 2009 (2) SCC 513, *Basalingappa vs. Mudibasappa*, Criminal Appeal No.636 of 2019 decided on 09.04.2019.

32. It is therefore, submitted that the present Appeal is without merit and may be dismissed.

Submissions heard and Record Perused.

33. The present Complaint under Section 138 NI Act ***pertains to Cheque No. 200337 for Rs.1.5 crore dated 22.12.2010*** which on presentation by the Appellant, was dishonoured on account of *'insufficiency of funds*'.

34. The Respondents have admitted their signatures on the impugned cheques, but a defence was setup which was reiterated by Respondent No. 2, Sh. R. L. Verma; Respondent No. 3 Dhruv Verma and Respondent No. 4 Ms. Aruna Verma, in their respective testimony that there was *no existing debt or liability* underlying the said cheques, which were only given as a security.

35. Under Sections 139 and 118 NI Act, once the signatures on the cheques have been admitted by the accused, there is a reverse onus on the accused to prove that there was no existing debt or liability.

36. In the case of *M.S. Narayana Menon @ Mani* (Supra), it has been explained that this onus on the accused may be discharged and in this regard reference is made to the case of *Goaplast (P) Ltd. v. Chico Ursula D'Souza and Another* (2003) 3 SCC 232, wherein the Apex Court held that the presumption

arising under Section 139 of the Act can be rebutted by adducing evidence and the burden of proof is on the person who wants to rebut the presumption..

37. Similarly, in *Rangappa vs. Mohan*, (2010) 11 SCC 441, the Apex Court held that Section 139 NI Act is an example of reverse onus clause that has been included in furtherance of the legislative objective of improving the credibility of negotiable instruments. The rebuttable presumption under Section 139 is a device to prevent undue delay in the course of litigation. Apex Court has explained that when an accused has to rebut the presumption under Section 138 NI Act, the standard of proof for doing so is that of *"preponderance of probability*". If the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the Complainant's case must fail. For this purpose, the accused may either lead his own independent evidence in support of his defence or else may be able to rely on the material submitted by the Complainant, to establish his defence.

38. Therefore, it is settled that to establish the probable defence to rebut the presumption under Section 139 NI Act, the accused may rely on the testimony/cross-examination of the Complainant or may adduce his evidence.

Agreement to Sell/ Cancellation Agreement:

39. The Complainant in his Complaint to claim that there was an existing liability merely stated that the cheques in question on presentation got dishonoured, but there not a whisper about the alleged existing debt or liability in discharge of which the alleged cheques got issued. In this

context, the testimony of the Complainant-Kushal K. Rana, Director of the Complainant Company, who deposed on its behalf, becomes relevant.

40. CW-1 Kushal K. Rana in its examination-in-chief, aside from repeating the contents, has not explained the *legally enforceable debt and liability*. The entire edifice of the Complainant rested on two documents, viz. Agreement to Sell of November, 2008 and Cancellation Agreement dated 04.07.2009 CW1/DX5. However, these aspects have emerged only in his cross-examination, by the Respondents.

41. The CW-1 Kushal K. Rana in his cross-examination had explained that the Complainant-Company is in the business of property transactions with the Respondents since 2008. The Respondents had agreed to sell the property bearing No. A-1/23, New Friends Colony and the property at 4th Floor, Gopal Dass Tower, Connaught Place, New Delhi, for which an ***Agreement to Sell was signed between them in November, 2008 and Rs.1.5 crores was accordingly, paid to the Respondents***.

42. ***Respondent No. 3-Dhruv Varma*** in his testimony has refuted this Agreement to Sell of November, 2008. He explained in his examination-in-chief, that there was a separate Agreement executed in 2009 with respect to the property on the *9th Floor of Gopal Das Building*, which was an entirely different transaction, which had no concern whatsoever with the alleged Agreement in respect of property bearing No. A-1/23, New Friends Colony and 4th Floor, Gopal Dass Tower, Connaught Place, as has been asserted by the Complainant. He further explained that there is separate litigation pending in respect of 9th Floor, Gopal Das Building property. The

consideration for the said transaction was separate and independent of the present transaction in question.

43. The Complainant has failed to place on record any such Agreement to Sell of November, 2008 in regard to the purchase of the two properties. Significantly, when asked in the cross-examination about this Agreement to Sell, Complainant gave the explanation that it was torn after the new Agreement in July, 2009 cancelling the earlier Agreement to Sell, was executed. This explanation for not being able to produce the Agreement to Sell of November 2008 is clearly not tenable.

44. The Complainant is a Company and even after cancellation, the record would definitely be maintained. Even if for the sake of arguments it is accepted that the original was torn, the Complainant has even failed to produce a Copy of the same. The Complainant thus, failed to prove the first transaction under which allegedly 1.5 Crores was given. The said Agreement, 2008 was absolutely essential to corroborate the claim of the Complainant and has significantly not been produced, which creates a doubt about their being any Agreement to Sell in respect of the two properties as alleged by the Complainant. This is more so as the CW-1 has merely deposed about the payment of Rs. 1.5 Crores under this Agreement, but has failed to disclose the agreed entire Sale consideration. Also, it is highly improbable that one Agreement would be executed in respect of two properties. The onus was on the Complainant to have proved his transaction of Agreement to Sell of November, 2008, which he has miserably failed to do.

Cancellation Agreement of 4th July, 2009:

45. The Complainant has further contended that since this Agreement to Sell of November, 2008 got cancelled and replaced by the ***Cancellation Agreement Ex.*** CW1/X-5 ***on 04 July, 2009*** it is therefore, irrelevant. It was further explained by CW-1 in his cross-examination, that the Respondents resiled from honouring this Agreement to Sell on account of price escalation of the two properties. Consequently, the parties entered into Cancellation Agreement in July, 2009 Ex. CW1/X-5 wherein the respondent agreed to pay a sum of Rs.1.5 crores towards the cancellation of Sale Agreement in addition to return of Rs.1.5 crores which had been given as advance with respect of the aforesaid two properties.

46. Pertinently, in this Agreement of Cancellation Ex CW1/X-5, there is no mention whatsoever of the two properties or the Agreement to Sell of November, 2008. It states that the Second Party i.e. the Complainant had agreed to purchase ***certain properties*** belonging to the Respondents and had made a payment of Rs.1.5 crores to the first party, out of which Rs.75 lacs were paid *vide* Pay Order dated 28.11.2008 and a sum of Rs.75 lacs was paid in cash to the first party i.e. the Respondents who expressed their inability to sell the properties and offered to return the total sum of Rs.3 crores towards *repayment, interest and compensation for loss on account of increase in value of properties*. Two cheques dated 30.07.2009 and 11.08.2009 for a sum of Rs.1.5 crores each, were accordingly issued to discharge the Respondents of their liability.

47. The Respondents have asserted that the claim of the Complainant that he paid a sum of Rs.1.5 crores towards the cancellation of Agreement to

Sell, in addition to return of Rs.1.5 crores which had been given as advance with respect of the aforesaid two properties, is entirely false.

48. To ascertain the truth, reference may be made to this Cancellation Agreement, where there is no reference of the Agreement to Sell of November, 2008 or of there being any condition under the Agreement to Sell of November, 2008, that in case of non-compliance of the Agreement to Sell, the Respondents would be liable to pay double the amount of Rs.1.5 Crores that was paid by the Complainant under the Agreement to Sell. Rather, the Cancellation Agreement stated that against Rs.1.5 Crores, the respondents have agreed to pay additional Rs.1.5 Crores towards *repayment, interest and compensation for loss on account of increase in value of properties*. This belies the case of the Complainant in the light of this stipulation as it is contrary to the claim of the Complainant that Rs.3 crores were agreed to be returned in terms of the Agreement to Sell where double the amount of paid amount of Rs. 1.5 Crores was agreed to be paid. It thus, was imperative to produce the Agreement to Sell, especially when the respondents have denied any such transactions as well as the Agreements. The contentions of the Complainant are self-contradictory, as noted above. The best evidence to corroborate its claim was to produce the Agreement to Sell, which the Complainant has miserably failed to prove. This makes his contentions based on Cancellation Agreement, also come under the cloud.

49. These aspects assume significance in the light of the defence of the Respondents that the property deal was in respect of another property and not in respect of the two properties to which reference has been made by the Complainant.

50. Moreover, the learned MM has rightly noted that according to the Complainant, the alleged Agreement to Sell did not go through on account of certain escalation of price, but there is no evidence whatsoever led to explain the sudden high escalation of price within the period of 08 months between the execution of Agreement to Sell in November, 2008 and its alleged cancellation in July, 2009.

Payment of Rs.1.5 Crores by the Complainant:

51. The ***next aspect*** for consideration is whether any payment was made by the Complainant in the sum of Rs.1.5 crores, as claimed by the Complainant.

52. CW-1 Kushal K. Rana to prove the payment of Rs.1.5 crores, produced RBS Bank Certificate Ex.CW1/DX3, reflecting the payment of Rs.75 lacs on 17.12.2012. He explained that the balance Rs.75 lacs was paid in cash.

53. The Complainant has however, not produced any document to show that he had paid Rs.75 lacs in cash. He has also failed to disclose the source of procuring this money including withdrawal of the money from the bank. The ITR of the year 2008-09 does not reflect any entry of Rs.1.5 crores, to the respondent. This assumes importance as neither the assertion of Rs.75 lacs nor of cash payment is corroborated by the ITR; and also in view of the assertion that the transaction pertained not to the two properties but was in relation to third property.

54. The Complainant has failed to prove an outstanding liability of Rs.1.5 Crores and that too, under the Cancellation Agreement.

55. The ***defence of the Respondents*** as deposed by ***Respondent No. 3-Dhruv Varma*** in his testimony as CW-1(*sic*) DW1 as well as other two defence witnesses, was that there were two transactions with the Complainant by which a Loan of Rs.1 Crore was taken. The *first transaction* was of Rs.25 lacs, which was repaid by way of Pay Order. The *second transaction* was of Rs.75 lacs that were also given by Pay Order, sometime in latter part of 2007-08.

56. This defence is fully corroborated by the admission of the Complainant in his cross examination that in his ITR of the year 2008-09, the payment of Rs.1 crore has been shown to be made to *M/s R.L. Varma & Sons* (HUF)/Respondent No. 1.

57. The case of the Complainant does not end there. According to the Complainant, these cheques that were given in August, 2009 got replaced on 22.12.2010, which is corroborated by the letter Ex.CW1/DX8 wherein it is indicated that four Cheque, two dated 30.07.2009 and other two dated 11.08.2009, were substituted by four cheques, out of which two cheques in the sum of Rs.1.5 crores each while the other two cheques were of Rs.25 lakhs each, all dated 22.12.2010, i.e. in all for Rs.3.5 Crores which again matches no explanation.

58. Pertinently, the replaced Cheque bearing No. 200337 dated 22.12.2010 in sum of Rs.1.5 crore is the cheque in question. Though this cheque is apparently issued by Respondents on 22.12.2010, but this cheque does not correspond with the averments of the Complainant in respect of the Agreement to Sell of November, 2008 and its cancellation in July, 2009.

The Complainant has failed to show that this cheque was issued in respect of legally recoverable liability.

59. DW-3 has tried to explain the issue of signed cheques in his deposition by asserting that Complainant used to come to his house regularly, after this second transaction of loan of Rs.75 lacs. As there was delay of payment of this amount, the Complainant used coercive measures and brought his common friend who was having a pistol. They used abusive language and took his signatures on blank papers as well and obtained his signatures on 4 or 5 cheques including the cheque in question. He used to tell him that he did not want any litigation and wanted his money back. ***These cheques were filled with details and were not blank.*** Subsequently, he asked him to give another set of Cheques as security and 4 or 5 cheques were given by him as Security that included the cheque in question. He gave the cheques as he was vulnerable and wanted to close the matter.

60. He further deposed that the earlier issued cheques which were replaced by the subsequent sets were never returned to him. Further, it is deposed that the Complainant forced all the three Respondents to sign the cheques in question on behalf of HUF, though in normal course no cheque is signed by the Karta as well as members of HUF, especially when the cheque pertained to the HUF account.

61. There is some merit in this contention of the Respondents. It may be noted that the impugned cheque has been issued from the account of R.L. Varma and Sons (HUF) of which R.L. Varma/Respondent No. 2 was the *Karta*. It is a settled law which needs no reiteration that when the account is of an HUF, then it is the *Karta* who alone is authorised to sign the cheque

and it need not be signed by all the members of HUF. Pertinently, the cheque in question bears the signatures of R.L. Varma as *Karta,* but is also signed by Dhruv Varma and Aruna Varma, the other two members of HUF. It has been rightly pointed out that no cheque of HUF need be signed by all the members of HUF but all the Respondents were compelled to sign the cheques under coercion by the Complainant. It is a significant aspect which again serves as support to the defence as setup by the Respondents.

62. The defence of the Respondent may not be convincing as the Cheque in question, was admittedly issued by the Respondents. It is not comprehendible that Cheques of Rs.3.5 Crores would be issued for an outstanding Loan of Rs 75 Lacs. There is no corresponding Complaint to the Police or instructions to the Bank to stop the Payment in case the cheques were obtained under coercion. Further, no person would replace the cheques had they been obtained under duress. ***However, what was most significant is whether it was issued for any existing Legal liability.***

Legal Debt/Liability:

63. What however, has emerged from the testimony of the DW-3 Dhruv Verma is that a loan of Rs.75 lacs had been taken by the Respondents which was outstanding. No other legally enforceable debt or liability has been proved on behalf of the Complainant. The impugned cheque Ex.CW1/B dated 22.12.2010 is in the sum of Rs.1.5 crores issued on behalf of the Respondents, while the evidence of the Complainant and admission of the Respondent has been able to show only an outstanding liability of Rs.75 lacs (as the respondents have failed to prove the refund of Rs.75 Lacs.).

64. The most significant aspect which has emerged is that the admitted/proved liability is much less than the amount stated in the alleged cheques. The disputed cheque, therefore, cannot be held to be drawn in discharge of the loan liability of the Respondents. The admitted liability of the part liability by the Respondents does not help the Complainant in his Complaint under Section 138 NI Act, which requires that the cheque amount must be for the entire discharge of the existing debt or liability.

65. In case of *M/s. Alliance Infrastructure vs. Vinay Mittal*, MANU/DE/0031/2010, it was explained that the expression *"amount of money"* means in a case where the admitted liability of the drawer of the cheque gets reduced on account of part payment made by him after issuing but before presentation of cheque in question. No doubt, the expression "amount of money" would mean the amount of cheque alone in case the amount payable by the drawer on the date of presentation of cheque, is more than the amount of the cheque.

66. In *Angu Parameswari Textiles vs. Sri Rajam & Co.*, MANU/TN/0662/2001, it was observed that if the cheque is more than the debt due, Section 138 NI Act would not be attracted.

67. The Respondents had been able to show that the existing liability as reflected from the documents of the Complainant and as admitted by the Respondents was only to the tune of Rs.75 lacs while the impugned cheque was for Rs.1.5 crores. Therefore, the requisite ingredient under Section 138 NI Act that the cheque must be in discharge of legally enforceable liability or part thereof is not satisfied.

Conclusion:

68. In the light of aforesaid discussion, it is held that the Complainant's case was as vague as it can be, in proving the underlying legally enforceable debt to support of the Cheque in question. Once the Complainant has not been able to prove this most essential ingredient of Section 138 NI Act, the Complaint under Section 138 NI Act has been rightly dismissed by the Ld. MM.

69. It is held that the Appeal has no merit and is dismissed.

70. Pending Applications are disposed of accordingly.

(NEENA BANSAL KRISHNA)
JUDGE

JUNE 28, 2025
pp/N