

Moot Court Exercise

II Semester

MOOT PROPOSITION-1

1. Fazer Delia Ltd. (hereinafter referred as “Fazer”), is a private company incorporated and registered under the laws of Union of Delia (hereinafter referred as “Delia”), and having its registered office at Mimani (Capital of Delia). The Fazer is primarily engaged in the business of Sugar production and supply of sugar in various parts of Delia. For manufacturing of Sugar, Fazer procures raw material from different suppliers. Generally, the payment of raw material suppliers is done after the raw material is received, by way of cheques drawn from State Bank of Delia branch at Mimani.

2. Pulsar Delia Ltd. (hereinafter referred as “Pulsar”), is a private company incorporated and registered under the laws of Union of Delia, and having its registered office at Krotova. Krotova is the capital of State Energia located within the territories of Delia. Pulsar is primarily engaged in the business of supply of sugarcane to Sugar manufacturing companies.

3. In the month of December, 2013, a contract was entered between the Fazer and Pulsar for supply of Sugarcane worth Rs. 200, 000/-. Pulsar Delia duly supplied the agreed quantity of sugarcane to Fazer and accordingly a cheque was drawn in favour of Pulsar Delia by Fazer from its bank account in State Bank of Delia at Mimani branch payable at all branches. The cheque so issued by Fazer got dishonoured due to insufficiency of funds. Aggrieved by the dishonour of cheque, Pulsar served a legal notice to Fazer as per Section 138 of the Negotiable Instrument Act, 1881 (“NIA”). As the payment was not received even during the statutory time period, thus a criminal complaint was filed before Magistrate of Krotova by Pulsar. Pursuant to the complaint, notices were issued in the matter and Fazer was summoned before the Court.

4. Fazer challenged the complaint filed by Pulsar in a petition before the High Court of Energia (Fazer Delia Ltd. v. State of Energia and Anr.), on the ground that the Magistrate of Krotova is not having jurisdiction to proceed with the complaint and only Court at Mimani is having jurisdiction to take cognizance of the present complaint. Fazer further argued that the cause of action arose in Mimani because cheque was drawn from Mimani. Arguments were heard and judgment was reserved by the High Court.

5. On 1st August, 2014, a three judge bench of the Supreme Court of Delia in the case of DashrathRathod v. State of Energia, 2014 (9) SCALE 97 held that a complaint under section 138 of the NIA for dishonour of cheque, can be filed only in the court within whose local jurisdiction the bank that dishonoured the cheque (where the offence is committed) is situated. The Court clarified that the Complainant is statutorily bound to comply with provisions of the Code of Criminal Procedure, 1973 and therefore, the place or suits where the Section 138 Complaint is to be filed is not of his choice. As per the specific observations made by the Supreme Court, the position in so far as territorial jurisdiction of courts qua complaints under section 138 is as follows:

a. Prosecution can be launched against the drawer of the cheque only before the court within whose jurisdiction the dishonour took place.

b. The cases where the complaint is not filed within the jurisdiction of the court where the bank that dishonoured the cheque is situated, the same will be returned to the complainant for filing a fresh complaint.

c. All those cases where, the proceedings have reached to the stage of recording evidences as under section 145(2) of NIA will continue in the courts where they are pending now.

6. On 14th August 2014, High Court of Energia in Fazer Delia Ltd. v. State of Energia and Anr. held that "AT PAR" Cheque cases can be filed in the Court within whose local jurisdiction the nearest available branch of bank of the drawer situated. Based on this reasoning, High Court held that complaint was maintainable in Krotova because the cheque issued by Fazer to Pulsar was payable at all branches and it was therefore considered as "AT PAR" cheque. In the judgment of High Court no reference was made to the Supreme Court judgment in Dashrath Rathod v. State of Energia.

7. Aggrieved by the judgment of High Court of Energia, Fazer filed a special leave petition under Article 136 of the Constitution of Delia before the Supreme Court of Delia (Fazer Delia Ltd. v. State of Energia and Anr., SLP 121/2014). Fazer primarily raised the ground that judgment of Energia High Court failed to take note of the Supreme Court judgment in Dashrath Rathod v. State of Energia. On the other hand, Pulsar argued that even though reference is not made to Supreme Court judgment, still the judgment of High Court is not contradicting the Supreme Court judgment and it is clearly based on different set of facts pertaining to "AT PAR" cheques.

8. At the same time, Chalu Chit Fund Company (a company incorporated and registered under the laws of Union of Delia) filed a Review Petition before the Supreme Court seeking review of its judgment passed in Dashrath Rathod v. State of Energia. In the Review Petition (Chalu Chit Fund Company v. State of Energia, R.P. No. 111/2014), Chalu Chit Fund Company argued that they have around fifty thousand cases pending under Section 138 of NIA before different Courts in the country and thus it will cause them severe hardship to transfer these cases to appropriate jurisdiction as per the judgment in Dashrath Rathod v. State of Energia. In the review petition they challenged the correctness of judgment in Dashrath Rathod v. State of Energia and in the alternative requested the Court to give this judgment a prospective pertinence, i.e. applicability to Complaints that may be filed after its pronouncement. On the other hand, it was contended by the Respondent (State of Energia) that Chalu Chit Fund Company was not a party to the original case and thus it is not having sufficient locus standi to file the present Review Petition.

9. Chief Justice of Delia considering the similar and substantial questions of law involved in the above two matters constituted a five judge bench to dispose the above two matters together. Broad issues framed by the Court are:

a) Whether the judgment of Supreme Court in Dashrath Rathod v. State of Energia is correct or it needs to be reviewed?

b) Considering the judgment of Supreme Court in Dashrath Rathod v. State of Energia as correct, whether there is a need to give this judgment prospective pertinence?

c) Considering the judgment of Supreme Court in Dashrath Rathod v. State of Energia as correct, whether the judgment of High Court of Energia in Fazer Delia Ltd. v. State of Energia and Anr. is correct or it needs to be set aside?

10. In the order passed by Chief Justice constituting five Judge Bench, it was mentioned that the arguments relating to maintainability of both the matters are kept open and both parties are at liberty to frame issues of their choice in addition to the issues framed by the Court. After initial adjournments, the matter has been posted for final hearing on 23/10/2014.

Note:

The laws of Delia are in *pari-materia* with the laws of India. All laws applicable to Delia as on 20.09.2014 are allowed in the Moot Competition