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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Criminal M.C. No.2219 of 2010 & CrI. M.A. No.8680 of 2010

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28.07.2010

M/S. METLON INDIA PVT. LTD. & ORS. Petitioners
Through: Mr. Iqbal Ashraf Rahmani, Advocate.

Versus

M/S. ESTER INDUSTRIES LTD.Respondent

Reserved on: 15th July, 2010
Pronounced on: 28th July, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

J U D G M E N T

1. The present petition has been filed by the petitioners assailing summoning order dated 23rd September, 2008 passed by learned Metropolitan Magistrate in a complaint under Section 138 of Negotiable Instruments Act.

2. The sole ground argued before this court is that a demand notice u/s 138 N.I. Act should specify that the cheque amount should be paid within 15 days of receipt of notice whereas in the notice served by the complainant upon the petitioner payment of dishonoured cheque amount was demanded within 30 days instead of 15 days. It is stated that in view of this, the notice was bad in law and the summoning order should be quashed.

3. This court in *Satyawan Chaplot vs. Rajendra; 1998 (4) Crimes 375* and *German Remedies Ltd. vs. Harish C. Duggal Agencies; 1997 (1) RCR (Crl.) 412* has held that

notice of demand suffers no illegality if the period demanding money stated in the notice was not 15 days. In *M/s. Rahul Builders vs. M/s. Arihant Fertilizers*; 2008 CLJ 452, the Supreme Court observed that Section 138 of Negotiable Instruments Act contemplates service of notice and payment of amount of cheque within 15 days from date of receipt of notice. It does not speak of 15 days notice. The notice was held to be a valid notice although the accused was asked to make payment only within 10 days instead of 15 days. In *Hammanna S. Nayak vs. Vijay Kumar Kalani*; 2000 CLJ 4438, it was held by Bombay High Court that period of 21 days' mentioned in demand notice will not make it illegal.

4. I, therefore, consider that merely because the complainant demanded payment of the dishonoured cheque amount from the petitioners within 30 days instead of 15 days, the notice sent by the complainant would not become illegal. This petition has no force and is dismissed with cost of Rs.10,000/-, to be deposited with Delhi High Court Legal Services Committee. In case the cost is not deposited, the learned Metropolitan Magistrate before whom proceedings are pending, shall recover this cost from the accused and get it deposited with Delhi High Court Legal Services Committee. Non-deposit of cost shall entail necessary legal consequences.

SHIV NARAYAN DHINGRA
[JUDGE]

JULY 28, 2010
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