

2025 LiveLaw (SC) 889

**IN THE SUPREME COURT OF INDIA
CRIMINAL APPELLATE JURISDICTION**

AHSANUDDIN AMANULLAH; J., K. VINOD CHANDRAN; J.

9 SEPTEMBER, 2025

CRIMINAL APPEAL NO. OF 2025 (Arising out of SLP(Crl.) No. 2002/2025)

H. S. OBEROI BUILDTECH PVT. LTD & ORS. *versus* M/S MSN WOODTECH

Negotiable Instruments Act, 1881 - Section 138, proviso to section 142 - Supreme Court quashed complaint, citing that there cannot be an 'automatic or presumed condonation' of a complaint filed beyond the statutory time limit - When a complaint is filed beyond the mandatory time limit, a proper application or affidavit must be filed by complainant disclosing the reasons for delay - Held that the High Court's opinion that a separate application for condonation of delay is not a 'statutory mandate' under Section 142(b) of the Act was also erroneous - Court is obligated to take note of a complaint being filed beyond the limitation period, consider the reasons disclosed for the delay, and come to a 'judicious conclusion' that condonation is justified before taking cognizance and issuing summons. [Paras 6-9]

[Arising out of impugned final judgment and order dated 21-11-2024 in CRLMC No.5767/2023 passed by the High Court of Delhi at New Delhi]

For Petitioner(s): Mr. Yugansh Mittal, AOR Mr. Pawan K. Mittal, Adv.

For Respondent(s): Mr. Sudhir Tewatia, Adv. Mr. Lal Singh Thakur, Adv. Mr. Syed Mehdi Imam, AOR Mr. Tabrez Ahmad, Adv. Mr. Shahid Ali Khan, Adv.

ORDER

Heard learned counsel for the parties.

2. Leave granted.

3. The appellants have moved this Court against the order dated 21.11.2024 passed by the High Court by which the order summoning the appellants by the courts below in a case filed under Section 138 of the Negotiable Instruments Act, 1881 (in short, the 'Act'), has been upheld.

4. Learned counsel for the appellants submitted that the simple point to be considered in the present case is whether the Trial Court could have issued summons when admittedly the petition under the Act was filed five days beyond the maximum period of 30 days from the cause of action. It was submitted that the Trial Court, in fact, has gone totally beyond the records and has categorically stated in the order issuing summons that the petition filed by the respondent was within the limitation period. Learned counsel submitted that though there is power to condone the delay under proviso to Section 142 of the Act, but the same has to be exercised only upon a proper application/affidavit filed by the complainant disclosing reasons for such delay.

5. *Per contra*, learned counsel for the respondent submits that once the statute confers power on the Court to take cognizance even beyond the limitation period and there being a delay of only five days was well within the capacity of the Court to condone. It is further submitted that it was only due to inadvertence that such affidavit could not be filed, though the same had been prepared in advance, but at the time of actual filing, it was not attached with the complaint. It is further submitted that such application is still pending before the Trial Court and even at this stage, the same can be taken note of.

6. Having considered the matter, we are of the opinion that the order taking cognizance and issuing summons needs interference. From a purely legal point of view where facts are admitted that the complaint was filed beyond the time prescribed under the statute, there cannot be an automatic or presumed condonation. In the present case, the respondent is on a weaker wicket for the reason, that the Trial Court proceeds on an erroneous presumption and notes that the complaint was filed within the limitation period. Even for the sake of argument, if it is assumed that the power under Section 142 of the Act exists for the Court to condone delay, the first requirement is that the Court has to take note of the fact that there is a delay and thereafter it had to go on the point whether the reasons which have been furnished by the complainant are sufficient to condone such delay and only then move on to take cognizance and proceed for issuing of summons.

7. In the present case, the same has absolutely not been done. The High Court opining that though there may have been delay but still the Trial Court is well within its power to condone the delay and in terms of Section 142(b) of the Act, filing of an application for condonation of delay is not a statutory mandate, again in our considered view, is erroneous.

8. Once the statute prescribes a mandatory time limit for filing a complaint, there cannot be any deviation from the same except when an application accompanying the complaint is filed seeking condonation disclosing reasons for the delay and even then it is obligatory on the part of the Court to take note of such filing beyond limitation and to consider the reasons disclosed independently and to come to a judicious conclusion that in the facts and circumstances of that case condonation is justified. The same not having been done, the order cannot be sustained.

9. Accordingly, the order issuing summons to the appellants by the Trial Court as upheld by the High Court is set aside. In the result, the complaint itself stands quashed. The appeal stands allowed.

10. After the order was dictated, we have been informed that the civil proceedings for recovery of the amount have been instituted by the respondent. We would only observe that the same will not be prejudiced in any manner by the present order.