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# MERCANTILE LAW

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## I INTRODUCTION

A NUMBER of cases were decided during the surveyed year i.e., 2017 by the Supreme Court and various High Courts of India on the different facets of Law of Contract, Law of Partnership and Negotiable Instruments Act but no significant case was decided on the Sale of Goods Act which traditionally comes under the broad subject of Mercantile Law. Many doubtful issues were expounded and new principles propounded. It has also been observed that some courts have interpreted only those provisions of law that came up for judicial resolution in such a way that have come in conflict with the settled principles of law. The apex court has formulated guidelines relating to disputes which pertains to dishonor of cheques with a thrust on their amicable and speedy resolution in order to address alarming rise of pendency of such cases as revealed by 213th Law Commission Report. The *ratio* of all these cases that have made a valuable addition to the existing corpus of literature on the subject have been analyzed and wherever necessary an alternative view point has been also discussed.

## II LAW OF CONTRACT

**Concluded Contract**

In *Amit Mohanlal* v. *Panalal Das,*[1] an agreement was made between the vendor and vendee but it was signed by the vendor only, nevertheless, vendee paid earnest money that was accepted by the vendor. There was a dispute between these two parties and opposite party to the case contended that it is a unilateral contract that has no value in the eyes of law. It should have been signed by both the parties. The court rightly declared it as a valid contract but without assigning reasons for this declaration. The reasons are not hard to find. Section 9[2] of the Contract Act clinches this issue. It

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1 AIR 2017 (NOC) 854.

2 S. 9 reads as follows: In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

is trite to say that a contract between the parties may be made either expressly or impliedly and as a general rule, oral or a written contract without signature of the parties is valid. This accepted legal position can be stretched for holding that a written offer and an oral or implied acceptance or vice versa will also ripen into a contract. This of course will not apply to exceptional situations where law expressly provides that a contract must be in writing and signed by the parties as, for instance, is provided in section 25 of the Contract Act.

In *Durga Krishna Store Private Limited, Assam* v. *Union of India,*[3] a beneficial interpretation was given to the provisions of the Indian Contract Act and Arbitration and Conciliation Act, 1996 so as to avoid any interpretational conflict. In the instant case, the petitioner had made a commercial offer containing arbitration clause and received its valid acceptance through acceptance letter. There was a dispute between the parties and validity of the arbitration agreement was contested on the ground that there was no formally signed agreement between the parties to give effect to the arbitration agreement as is required under section 7[4] of the Arbitration and Conciliation Act, 1996. It was contested that this section 7 envisages that an arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement and shall be in writing. Thus section 7 is not satisfied in the present contract.

The court rightly concluded, without any detailed elaboration, that "absence of any formally signed agreement between the parties would not affect either acceptance of contract or implementation thereof and application by petitioner for appointment of arbitrator is maintainable".

The deeper analysis of section 7 will make it abundantly clear that signature is not *sine qua non* for a written contract to make it an arbitration agreement. This provision gives a very flexible meaning to an arbitration agreement as it deems a

3 AIR 2017 (NOC) 859 (GAU).

4 Arbitration agreement.

1. In this Part, 'arbitration agreement' means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.
2. An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.
3. An arbitration agreement shall be in writing.
4. An arbitration agreement is in writing if it is contained in-
   a. a document signed by the parties;
   b. an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or
   c. an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.
5. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract

contract in writing which shall be deemed to be in writing if it results after an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement; or is based on an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

The logical inference from the above discussion is that an oral contract containing a clause for arbitration agreement cannot result into valid arbitration agreement in view of the language used in section 7 which suggests that there should be written record of the arbitration agreement. But so long as there is a written record of the agreement, (including exchange of letters or telegram etc) a clause there in pertaining to arbitration will be deemed to be an arbitration agreement even if that is unsigned.

**Acceptance of Tender**

It is an accepted principle of law of contract that an offer once made is revocable both in England as well as in India and can be revoked at any time before it is accepted. There is no difference between Indian and English law on this point. This rule is equally applicable to tenders also and courts have held that a tender is an offer, and once it is submitted, it can be revoked at any time before it is formally accepted expressly or impliedly. The moot questions is: are these conditions subject to the contract that is contrary to this principle of law. Sections 4[5]and 5[6] of the Contract Act read together nowhere say that the requirements of these provisions can be contracted out. The Madras high court in *Alfred Schonlank* v. *Muthunaya Chetti,*[7] has held that both on principle and on authority it is clear that in absence of consideration for the promise to keep the offer open for a time, the promise is mere *nudum pactum.*[8] However, the courts in England[9] as well as in India[10] have held that an offer will be irrevocable where the tenderer has on some consideration promised not to withdraw it or where there is a statutory prohibition against withdrawal.

5 S. 4 provides when communication of offer, acceptance and revocation of offer and acceptance is complete. Relevant portion of s. 4 reads: The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.

6 S.5 deals with revocation of proposal and acceptance: Relevant portion reads: A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards....

7 (1892) 2 Mad. LJ 57.

8 The English Law Revision Committee, 1937 had suggested in its 6th interim report that a promise to keep an offer open , even if without consideration, should be enforceable but this suggestion was not accepted.

9 See, *Mountford* v. *Scott*, (1975) 1 All ER 198.

10 See, *Secretary of State for India* v. *Bhaskar Krishaji Samani*, ILR (1925) 49 Bom. 759; AIR 1925Bom 485 where Bombay High Court ruled that the Rules framed under the Indian Forest Act prohibiting withdrawal of tenders are not ultra virus. See also, *National High Way Authority of India* v. *Ganga Enterprises,* (2003) 7 SCC 41.

In the above back drop, the decision of the Chhattisgarh high court in *R.P. Bhojanwala* v. *State of Chhattisgarh*[11] seems somewhat off the hook. The court has held that the tenderer had submitted tender with open eyes by accepting condition stipulated in tender that it will be valid for 120 days. He had not informed the authorities that tender submitted by him would be valid for only 30 days. He cannot withdraw now tender prior to the period stipulated in the contract. The court overlooked section 5 as discussed above which gives an offeror a statutory right to withdraw his offer at any time before it is accepted and the courts in England as well as India have held that offer can remain open only when either some consideration is given for it or it has a statutory mandate but in the instant case there was neither any consideration nor any statutory requirement, it was simply a stipulation that the tender submitted shall remain valid for 120 days.

**Concluded Contract**

A beneficial construction to the facts of *Life Insurance Corporation of India, Mumbai* v. *Krishna Devi*[12] was given by the Patna high court to give relief to the weaker party as against LIC. One Prakash Ram had submitted a proposal on 08.12.1984 for life insurance policy for an amount of Rs. 100000 during his life time for which respondent was mentioned as his nominee. He had paid Rs. 10360/- as the first premium and got receipt for this amount that was issued on 18.12.1984. The corporation did not pass any order either for acceptance or for rejection of the proposal even after the death of Ram Prakash on 04-09-1985.

When the wife of the deceased claimed the assured money as a nominee of the policy, the corporation refused to make the payment on the ground that the contract was not concluded as no formal acceptance of the proposal was communicated by the insurance company to the deceased. In the instant appeal, the LIC took the stand that the premium amount paid by the deceased was kept in a suspense account of the corporation and this is the reason that no pucka receipt was issued to him. Furthermore, the proposal was subject to the scrutiny of the officials and had not yet finally approved. This is evinced by the fact that no formal acceptance of policy proposal was communicated to the deceased.

The High Court upheld the observation of the trial court that delay in acceptance or rejection of the policy proposal speaks volumes about the carelessness and negligence of the corporation. The court found that the proposal submitted by the deceased was not defective and he had no pending obligation to be fulfilled. The corporation's lone argument was that since the proposer had died so his proposal cannot be accepted. The High Court made a pertinent observation that the proposal submitted by the deceased together with premium amount as required under rules had been submitted by him during his life time which was free from any defect and the

11 AIR 2017 (NOC) 68 (Chh).

12 AIR 2017 Pat. 75.

receipt issued by the corporation thereafter is sufficient proof that the contract was concluded before the death of the proposer and it makes no difference that the formal acceptance had not been communicated to the deceased.[13]

The judgment is appreciable as it will protect the interest of the gullible consumers and also of the third party (nominee). The insurers pay hard earned money as premium but they or their nominees are then refused benefits simply on the ground that though the proposal and premium were submitted, yet no contract was concluded as the formal acceptance to the proposal was not communicated to the insurer during his life time.

The Supreme Court in *M/s Vedanta Ltd.* v. *M/s Emirates Trading Agency LLC,*[14] was called in an SLP to determine status of correspondence between the contracting parties that was held to have concluded into the contract by three concurrent opinions expressed by the trial court, first appellate court and revision court. In this case an international tender was floated by the Bangladesh Chemicals Industries Corporation (BCIC) for supply of phosphoric acid. The respondent submitted its bid and was awarded an order for supply of 30,000 MT. The appellant had signed a backup support agreement with the respondent for supplies in case the tender was awarded to the latter that was furnished by the respondent to the BCIC in support of its capacity to deliver supplies. Thus, correspondence between the appellant and the respondent culminated in the latter forwarding a draft agreement to the appellant for sale/purchase contract for 3x 10, 000 MT phosphoric acid for the supply to the BCIC during Nov. and Dec., 2007. The covering letter appended to the draft agreement, required the appellant to sign, stamp and return the same to the respondent in confirmation. The appellant, in response, made a counter-proposal for supply of 3x9500 MT (max.) and between the period January to March, 2008 by incorporating necessary corrections in hand in the draft agreement. On the basis of this correspondence preceding the draft agreement, the First appellant court affirmed the finding of the trial court that a concluded contract has come into being.

The apex court held that while there was a proposal from the respondent, the appellant made a counter-proposal both with regard to the quantity and the period of supply. There is no material or evidence placed by the respondent that the draft agreement ever assumed the form of concluded contract by a meeting of minds both with regard to the quantity of supplies and duration for the same, much less was the agreement signed, stamped and returned by the appellant to the respondent in confirmation.

The apex court turned down the findings of the courts below on the ground that these courts did not specifically deal with the issue of the draft agreement, the corrections in the same, existence of a proposal and counter proposal with regards to quantity and time period for supplies, the absence of any executed contract by virtue

13 *Id.* at 79.

14 AIR 2017 SC 2035.

of the appellant having signed, stamped and returned the agreement to the respondent, in confirmation.

The apex court did not agree with the first appellate court that had reached to the conclusion that concluded contract had come into existence between the parties on the basis of exchange of correspondence preceding the draft agreement and also on the premise that the respondent had submitted its offer to BCIC on the assurance of the appellant for back up support if the contract was awarded to the former.[15]

The apex court rightly held that the appellant's assurance to BCIC for back up support in case contract is awarded to the respondent was based on an independent contract between the respondent and appellant and distinction has to be made between the acceptance and counter offer. The counter offer has to be accepted before any contract will come into existence. Invoking section 7 of the Indian Contract Act, the apex court laid down that the existence of a concluded contract is *sine qua non* in a claim for compensation for loss and damage under section 73 of the Contract Act arising out of a breach of contract. If, instead of acceptance of a proposal, a counter proposal is made, no concluded contract comes into existence.[16]

**Misrepresentation**

In *Kumar Rohit* v. *Allahabad Bank, Jharkhand,*[17] the contours of misrepresentation were outlined. E-auction notice was issued for sale of immovable property mortgaged to bank against the loan. The property was put on an auction on "as is where is basis", "as it is where it is basis" and "where ever there ever" basis for realization of bank dues with interest, costs, charges and expenses for which appellant was declared highest bidder who deposited 25% of the bid amount. The case of the appellant is that he came to know that the secured asset is a lease hold property and the borrower is not the absolute owner of the plot and thus pleaded misrepresentation and contended that the E-auction notice was illegal.[18]

The High Court observed that there is no warrant of the proposition that illegality which would go to the root of the auction sale and a fact which would vitiate the auction sale, if discovered subsequently cannot be rectified. The fact that the sale notice was issued on "as is where is basis", or "as it is where it is basis" and "whatever there is basis", would not take it away from the mischief of misrepresentation as, knowledge of the defect in property cannot be imputed to an intending purchaser. Such covenants cannot overcome the fatal defect in auction notice and the auction conducted by suppressing vital information is illegal on the basis of misrepresentation.[19]

The court imposed a burden on the bank to disclose all relevant facts, including the fact that the property put on auction sale was a lease hold property and it belongs

15 *Id.* at 2037.
16 *Id.* at 2038.
17 AIR 2017 Jhar 65.
18 *Id.* at 69.
19 *Id.* at 70.

to the housing board. This is a basic requirement of fair play in action, more-so, in case of public sector banks. The auction sale which proceeded on a misrepresentation to the intending bidders is definitely illegal and is liable to be quashed.

The court has very rightly said that the common expressions used in the auction sales like "as is where is basis", "as it is where it is basis" and "whatever there is basis" cannot rectify suppression of material fact especially the defect in the title of the property. *These expressions can help only where defect in the goods is patent and can be discovered by the highest bidder through his ordinary examination.*[20]

**Public policy**

The courts have not, very rightly, kept public policy doctrine within the defined boundaries but it has been declared as an elusive, varying and uncertain concept. The fact of the matter is that public policy is what suits a society and befits the canons of justice and good conscience. As the society is in a constant movement so will be the public policy. In *Himachal Pradesh Financial Corporation* v. *Anil Garg,*[21] the Supreme Court has now made concept of public policy more amorphous and flexible by holding that it means what is in the larger interest of the society involving questions of righteousness, good conscience and equity upholding the law and not a retrograde interpretation. It cannot be invoked to facilitate a loanee to avoid legal obligation for repayment of a loan. The loanee has a pious duty to abide by his promise and repay. Timely re-payment ensures facilitation of the loan to others who may be needy. Public policy cannot be invoked to effectively prevent a loanee from repayment unjustifiably abusing the law. This judgment of the apex court can be read as laying down a general principle that public policy doctrine cannot be invoked against a clear and unambiguous provisions of law as statutory law cannot be against public policy.

**Unjust Enrichment**

The High Court in *Kumar Rohit* v**.** *Allahabad Bank, Jharkhand,*[22] further amplified the scope of "unjust enrichment doctrine" propounded by Lord Mansfield by holding that section 72 of the Indian Contract Act recognizes it and can be applied to multiple situations. This principle is in-fact foundation for the law governing restitution. The retention of property or money of another against the principle of justice, equity and good conscience has been held by the courts as "unjust enrichment". The court on the same analogy held that the forfeiture of the amount deposited by the successful bidder, for sale of a property which the respondent bank should not have sold in auction without prior approval of the Housing Board, would certainly amount to unjust enrichment.

20 Emphasis supplied by the present author.

21 AIR 2017 SC 1953.

22 AIR 2017 Jhar 65.

**Forfeiture of Earnest Money**

In *Suresh Kumar Wadhwa* v. *State of M.P,*[23] the Supreme Court made a pertinent observation with reference to forfeiture clause in a contract by taking cue from section 74[24]of the contract Act which deals with the subject in hand. The apex court laid down that section 74 requires that earnest money or security money cannot be forfeited unless there is a clause in the contract stipulating for forfeiture of this money. "A fortiori, if there is no stipulation in the contract for forfeiture, there is no such right available to the party to forfeit the sum".[25] In common parlance, earnest money is generally considered as caution money which is forfeited when the opposite party commits breach of contract. This money is advanced as a part of the stipulation in the contract which both the parties agree without expressly mentioning it as an earnest money liable to be forfeited in case of breach of contract. Thus the requirements of section 74 were read by the apex court in the following words:[26]

> Reading of section 74 would go to show that in order to forfeit the sum deposited by the contracting parties as "earnest money" or "security" for the due performance of the contract, it is necessary that the contract must contain a stipulation of forfeit. In other words, a right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to stipulate a term in the contract in that behalf.

From the above ruling, it is clear that mere earmarking of some money as a security or earnest money will not entitle the contracting party to forfeit it when the opposite party has committed any breach unless it is expressly declared as a stipulation in the contract. Can intention to have earnest money as a bonafide pre-estimate of damages or loss which a party may suffer due to non-performance of the opposite party be read from the terms of the contract? It is not quite clear but it appears that implied inference may not be substitute to the express declaration as the apex court has clearly said that there must be an express stipulation in the contract authorizing forfeiture of the earnest money in case of the default of the other party.

Another useful clarification was added to the above stated principle pronounced by the Kerala high court in *Soji Peter* v. *K.B.Vijayan.*[27] It was held that where an amount is not accepted by the seller as a bona fide pre-estimate of damages or loss which he would suffer on breach of agreement by the purchaser that cannot be forfeited as it cannot be called as an earnest money but mere advance of sale consideration.

23 AIR 2017 SC 5435.

24 Relevant part of s. 74 reads as: When a contract has been broken , if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty , the party complaining of the breach is entitled , whether or not actual damage or loss is proved to have been caused thereby , to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or , as the case may be , the penalty stipulated for....

25 *Supra* note 23 at 5439.

26 *Ibid.*

27 AIR 2017 (NOC) 1052 (KER).

**Bailment**

The Supreme Court in *M/s Rasiklal Kantilal & Co.* v. *Board of Trustee of Port of Bombay,*[28] delineated different facets of bailment. The apex court, to begin with, stated that the bailment is a contractual relationship and it can be created by any person who is in possession/custody of goods but not necessarily the owner of goods. When the purpose of bailment is accomplished the goods are to be returned or otherwise disposed of according to the directions of the person (bailor) delivering them. This observation of the apex court needs further explanation that it is not the formal contract which alone can create bailment but it can be created by an implied contract and can be even inferred from the surrounding circumstances in which this relationship was created. A formal contract or a contract stricto senso is not required. Thus, a bailment without consent is possible but that does not mean that a void or an illegal contract can give rise to a bailment, though the goods received under such contracts may have to be returned on the theory of unjust enrichment which law and justice prevents.[29]

This opinion of the present author is also buttressed by the opinion of the apex court which has held that the obligation of the bailee to return the bailed goods when the purpose of bailment is accomplished and the obligation of the bailor to pay the bailee the necessary expenses incurred by him for the purpose of the bailment would attend not only a bailment by contract but every kind of bailment.[30]

Rightly, the apex court laid down that title to the goods is irrelevant even in the case of a bailment arising under a contract. Any person who is capable of giving physical possession of goods can enter into a contract of bailment and create bailment under section 148 of the Contract Act.[31] Ownership of the goods bailed is not important but it is physical possession of the goods that defines bailment. However, possession has to be differentiated from custody which means servant or guest using host's goods is not a bailee.

The apex court extended relationship of bailment to the bill of lading and also laid down that the delivery of goods pursuant to a bill of lading creates a bailment between the shipper and the owner of the ship. Obviously, the legislature knew that a consignee under a bill of lading is a third party to the contract but intrinsically connected with the transaction and thought itis necessary to specify the rights and obligations of the consignee. Hence the fiction under the Bills of Lading Act, 1856, that the moment property in goods passes to the consignee, the liabilities of the consignee in respect of such goods would be the same as those of the consignor, as if the contract contained in the bill of lading had been made with the consignee.[32]

28 AIR 2017 SC 1283.

29 Emphasis supplied by the author.

30 *Supra* note 28 at 1298.

31 *Ibid.*

32 *Id.* at 1299.

**Obligation of the Bailor**

In *M/s Rasiklal Kantilal & Co.* v. *Board of Trustee of Port of Bombay,*[33] the apex court extended reach of section 158[34] by holding that "if the bailor has such an obligation to pay the bailee, any person claiming through the bailor must necessarily be bound by such obligation unless the bailee releases such person from such obligation."[35] This observation of the apex court has as such no mandate of section 158, nevertheless, it is based on the principle of equity and can be read in line with the spirit of this section though its black letters are silent on this point.

## III PARTNERSHIP ACT

**Effect of Non Registration of a Firm**

In *Vijay Kumar* v. *M/s Shriram Industries,*[36] the MP high court was prayed to deliberate upon section 69(2) of the Partnership Act and Order XXX, Rule 1 of the C.P.C which reads as under:

Section 69(2): No suit to enforce a right arising from a contract shall be instituted in any court by or on behalf of a firm against any third party unless the firm is registered and the person suing are or have been shown in the Register of firms as partners in the firm.

Order XXX, Rule 1 of the C.P.C: Suing of partners in name of firm(I) Any two or more persons claiming or being liable as partners and carrying on business in India may sue or be sued in the name of the firm (if any) of which such persons were partners at the time of the accruing of the cause of action and any party to a suit may in such a case apply to the court for a statement of the names and addresses of the persons who were, at the time of the accruing of the cause of action, partnership in such firm, to be furnished and verified in such manner as the court may direct.

The firm, M/s Shriram industries, represented through Mahila Krishnakumari and Daudayal, filed a suit praying for recovery of amount of Rs.1066740/ along with interest against another firm, Shyamsunder & Company represented through its partner. An application was moved by the defendant for dismissal of the suit on the ground that it was not maintainable under section 69(2) of the Act in as much as that the same was instituted by a registered partnership firm M/s. Shriram Industries but was not represented through two partners whose names find place in the register of partnership maintained by the Registrar of Partnership under the Act. It was admitted that Mahila Krishnakumari is a partner whose name figures in the register but the name of Daudayal does not figure.

33 *Supra* note 28.

34 S.158 reads: Repayment by bailor of necessary expenses- Where by the condition of the bailment, the goods are to be kept or to be carried, or have to work done upon them by the bailee for the bailor, and the bailee is to receive no remuneration, the bailor shall repay to the bailee the necessary expenses incurred by him for the purpose of bailment.

35 *Supra* note 33 at 1299.

The trial court, while holding the suit maintainable has held that the provisions of section 69 (2) of the Act came in to play only when a new partner is inducted without his name being mentioned in the registration certificate and not in the situation prevailing herein where son of the erstwhile registered partner had merely replaced his deceased father who was a registered partner. The trial court held that the suit can survive even if one of the registered partners arrayed in the plaint, representing the plaintiff partnership firm signs and verify the plaint.

The court ruled that a close scrutiny of section 69(2) of the Act further reveals that while making it mandatory for the plaintiff partnership firm and the partners representing the said person firm to be registered, the term "persons" and not 'person' has been employed. This reveals the legislative intent that the plaintiff-partner should be more than one in number. Meaning thereby that the plaintiff firm should be represented by at least two or more partners and both of them should be registered partners.

The object behind using the term "persons" in plural is explicitly clear. A partnership comes into being only when two or persons agree to share profits of business carrying on by them or any one of them under the Act. Thus, the very genesis of partnership is based on plurality and not singularity.[37]

The court outlined the object of having plural term of "person" in the section in the following words:

The object behind this use of plural term of "person" is to ensure that at least two persons which is the bare minimum requirement for formation of partnership firm to become plaintiffs to enable institution of a suit by them or through them and thereby save the suit from being hit by the prohibitory mandatory provision of section 69(2) of the Act.[38]

The court found similar spirit in Order XXX, Rule 1of CPC which provides that any two or more persons claiming or being liable as partners and carrying on business may sue in the name of the firm and any one of them should sign and verify the plaint. This procedural arrangement also contemplates two or more persons, which is again based on the same concept of plurality of persons necessary for partnership to be born.

The court invoked a number of decisions of the apex court[39] and courts of coordinate jurisdiction[40] and distinguished the present case from the decisions in which contrary opinions were expressed[41] and laid down that the maintainability of the suit filed by partner or partnership firm against another partner or partnership firm or against a third party, can be tested only on the anvil of section 69 (2) of the Act, which

36 AIR 2017 MP16.

37 *Id.* at 18.

38 *Ibid.*

39 See, *M/s Shreeram Finance Corporation* v. *Yasin Khan*, AIR 1989 SC 1769.

40 See, *Gandhi & Co.* v. *Krishna Glass Pvt. Ltd*, AIR 1887 Bom. 348; (1962) 66 Cal. WN 262.

41 *Firm Gopal Company Ltd. Bhopal* v. *Firm Hazarilal Company, Bhopal*, AIR 1963 MP 37.

is substantive law relating to partnership firm. The provision of order XXX of CPC, merely lays down procedure and cannot override the substantive special enactment on the subject which is the Partnership Act. Anything contained in the CPC on the issue which is contrary to the provision of the special law i.e., Partnership Act shall stand superseded and the said enactment will prevail upon general law which is CPC. It is settled principles of law that special enactment prevails upon the general law and also that the law relating to procedure gives way to substantive provisions of law. It is crystal clear that section 69 of the Act prohibits institution of a suit filed by a partnership or the partners against a third party, unless at least two qualified partners represent the plaintiff partnership firm. Qualified partners would mean partners whose names are mentioned in the registration certificate of the partnership.[42]

The court further held that provisions of Order XXX of CPC in fact furthers the intent and object of section 69(2) of the Act. Section 69(2) in mandatory term requires at least two or more qualified partners to represent the partnership from instituting the suit against the third party. While in similar tenor the provision of Order XXX, Rule 1 of CPC which is enabling in nature provides that two or more partners may sue or be sued in the name of the firm provided they are partners of the firm in question at the time accruing of the cause of action. Thus, there is no occasion of any clash or contradiction between the provisions of section 69 (2) of the Act and Order XXX of CPC.[43]

The court did not give any weight to the fact that one of the partners suing was mentioned in the partnership registration certificate and another was representing his deceased father whose name has figured in the registration certificate before his death but name of his son as partner was not on the register.

The Karnataka high court in *Raghava Reddy & Associates, Bangalore* v. *People Charity Fund, Bangalore*[44] added a very important qualification to the bar of filing a civil suit imposed in section 69 of the Partnership Act. The court ruled that what is envisaged in section 69(2) is that no right accrued by virtue of any contract between the partners can be enforced in the court of law unless the firm is registered and the person suing are or have been shown in the Register of firms as partners in the firm. The critical date for registration of the firm is not when the agreement was executed but when the suit was registered. This is an important clarification which could to a great extent avoid mist of confusion which not so infrequently is being debated before the courts.

**Interplay of Arbitration Agreement and Unregistered Firm**

In *Syed Irfan Sulaiman* v. *M/s New Amma Hospital, Saroonagar,*[45] to begin, with the High Court toed the line mandated by the statute by observing that once a

42 *Supra* note 38 at 20.

43 *Ibid.*

44 AIR 2017 Kar 174.

45 AIR 2017 Hyd 18.

change is made in the constitution of a registered firm, the necessary entry has to be made by the Registrar of Firms in terms of section 63. This would bring section 69(1) in focus. The court found that though the defendant has made an application to the Registrar for inclusion of his name in the register of firm but the Registrar has not acted upon this application. Consequently, the defendant cannot maintain a suit against the said firm to enforce his rights arising from the reconstituted deed. Section 69 (i) would be applicable in the present situation as the plaintiff firm continues with its registration and no change has been effected in this regard and it will not make any difference that the Registrar has failed to make entries for reconstituted firm as required by law.

Following the plain meaning of section 69(3) of the Partnership Act, the court ruled that only right of a partner of an unregistered firm or a partner not shown on the register of the firm is to file the suit for dissolution of the firm or rendition of accounts or realization of property of the dissolved firm.[46]

The court then added that this right can be enforced through arbitration proceedings as was held already by the apex court that an arbitration clause is separable from other clauses in a partnership deed and constitutes an agreement by itself.[47] The court pointed out that contrary opinion will lead to grave injustice to the defendant in the present case as he would be left with no remedy in law to seek enforcement of his right as his name does not figure in the register of the firm and his normal suit is not maintainable under section 69. Contrary opinion would mean; If the defendant has contributed any share in the reconstituted firm, he can neither recover it by filing suit of recovery of such share nor can he claim it by taking recourse of arbitration proceedings if view point of the counsel of the plaintiff is accepted. The court emphasized that real justice can be done only by holding that arbitration is an agreement in itself and would stand apart from the other clauses of the document in which it finds place.[48]

The court liberalized its approach further by holding that neither a specific form nor registration is mandated to give effect to an arbitration clause as long as it falls within the ambit of section 7 of the Arbitration and Conciliation Agreement Act, 1999. This is the reason that courts from time to time have given effect to arbitration clauses even in compulsorily registered documents.[49] Thus, the law is that even the partners of unregistered firm or a partner whose name does not figure in the register of firms can take help of arbitration proceedings.[50]

46 *Id.* at 23.

47 *Firm Ashok Traders* v. *Gurumukh Das Saluja*, (2004) 3 SCC155.

48 *Supra* note 46.

49 See, *Sms Tea Estates Private Limited* v. *Chandmari Tea Company Private Limited*, (2011) 14 SCC 66; *Geo-group Communications Inc.* v. *IOI Broad bandh Limited*, (2010) 1 SCC 562.

50 *Supra* note 48.

## IV NEGOTIABLE INSTRUMENTS

**Application of *Pari Delicto***

The MP high court in *Indian Overseas Bank* v. *Hari Shankar Sharma*[51] found a typical case of negligence where theft resulted in loss but no remedy was provided to either of the party by applying doctrine of *pari delicto*. A demand draft was stolen from the plaintiff bank and presented to the defendant bank by the customer that was sent to plaintiff bank for collection without caution. The plaintiff bank did not inform defendant bank about the alleged tampering. No police complaint was filed for theft of the demand draft by the plaintiff bank. The court ruled that both the banks are equally at fault and because of their negligence miscreant got free. The doctrine of *pari delicto* was invoked which means that when the parties involved in action are equally culpable for fault, court would not interfere with *status quo* nor would it side with either party.

**Presumption of Consideration**

The Madras high court in *Ashok Kumar* v. *Latha*[52] very lucidly explained presumption and burden of proof under section 118 of the N I Act. The court ruled that initial burden about the execution of the pronote is always on the plaintiff. He alone has to prove the execution of the instrument. Once he successfully proves its existence then flows the statutory presumption as envisaged under section 118 of the NI Act relating to passing of consideration. This statutory presumption is rebuttable and the defendant is free to rebut it. The court added a clarification here by stating[53] that it is not necessary that the defendant should always produce direct evidence. Even the circumstance or preponderance of probabilities itself is sufficient to rebut the legal presumption by the defendant.

**Nature of offence of Dishonour of Cheque**

The Supreme Court in *M/s Meters and Instruments Private Limited* v. *Kanchan Mehta*[54] declared that offence contemplated in section 138 of the NI Act is essentially a civil wrong but burden of proof is on accused by virtue of section 139 but standard of proof is "preponderance of probabilities". The following guidelines were formulated by the apex court for resolving cases under section 138 of the NI Act.

(i) The offences under section 138 has to be tried summarily as stipulated under CrPC but with modifications as be attune with the proceedings under Chapter XVII of the Act. The court is free to invoke in appropriate cases section 258 of CrPC and close proceedings and discharge accused on satisfaction that cheque amount with

51 AIR 2017 (NOC) 257.
52 AIR 2017 Mad 161.
53 *Id.* at 163.
54 AIR 2017 SC 4594.

assessed costs and interest is paid and if there is no reason to proceed with punitive aspect.

(ii) Section 138 offence has been made more compensatory in character and its punitive ting has been shaven off by diluting section 143 which stipulates that court may not, in its discretion, resort to summary procedure when it is satisfied that it is undesirable as the offence requires sentence of more than one year. It has been laid down that section 143 discretion has to be exercised only after considering further fact that apart from sentence of imprisonment the court has jurisdiction under section 357(3) CrPC to award suitable compensation with default sentence under section 64 IPC and with additional power of recovery under section 431 CrPC. This approach has to be adopted by the courts to ward off prison sentence of more than one year.

(ii) It is to be kept in mind that the provision in question is essentially compensatory in nature and not punitive. The punitive character to this provision is primarily to enforce compensatory remedy.

(iii) The offence is compoundable which should be encouraged and facilitated at the initial stage itself but that does not mean that compounding is debarred at later stage but should of course be subject to appropriate compensation as is deemed so by the court or parties.

(iv) The compounding of the offence requires consent of both the parties but court should not be stuck in the consent. The court may in the interest of justice ignore consent of the parties where it is satisfied that the complainant has been duly compensated. The court may in such case exercise its discretion and close the proceedings and discharge the accused.

(v) The net result is that summary procedure has to be followed in all case of section 138, except where exercise of power under second proviso to section 143 becomes inevitable, where compensation under section 357(3) is considered inadequate and there is no option but to award sentence of one year having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other relevant circumstances.

(vi) It may be desirable that in every complaint under section 138 the complainant gives his account number and if possible e-mail id. In every summons issued by the court to the accused, it must be mentioned that if the accused deposits the claimed amount assessed by the court, having regard to the cheque amount and interest/cost, within a specified date, the accused need not to appear before the court and the proceedings may be closed subject to any valid objections of the complainant. Where the accused informs the court and the complainant by e-mail about his willingness to make the payment, the court may close the case subject to valid objections of the complainant. In such case, the accused may be required to be present unless he is otherwise exempted subject to such conditions as may be considered appropriate. Where an accused want to contest the case, he will have to disclose specific defence for such contest. The court is free to ask specific questions to the accused at that stage. Where trial is necessitated by the circumstances of the case that should not come in way of exploring of settlement between the parties by the court. The courts are free to consider the option of plea bargaining. Subject to all this, the trial has to be

on day to basis and efforts should be made to conclude it within six months. The crux is that guilty should not go unpunished which should be inflicted at the earliest as per law and the one who conforms with the legal obligation should not be holed up in avoidable litigation.[55]

The apex court has come up with an out of the box solution for expeditious disposal of the cases under section 138 which will have positive impact on the huge pendency of the cases as pointed out above by the Law Commission. The endeavor of the apex court is to resolve and not to prolong litigation without any apparent benefit. The court has declared proceedings under section 138 summary in nature and offence under this provision as a civil wrong. The object is to give an opportunity to the accused to fulfill his promise which is also the wish of the complainant for which more emphasis is given on amicable settlement and, if required, even plea bargaining can be also tried. The focus is on compensation and not on punishment unless gravity of the offence demands so and the complainant is not content with compensation alone but builds a strong case for punishment as well. The judgment is landmark as it is bound to lessen the burden of the courts, ensure speedy disposal of the cases and reduce the cost of litigation. However, it is not clear whether the suggested procedure by the apex court has to be also invoked against the offender who is a repeated offender. Though the apex court has not said so expressly but has given an option to either of the party to press for routine procedure. Thus the situation like this can also be dealt under this ruling.

**Dishonour of Cheque and Notice thereof**

The impact of internet on banking transactions has become visible in every passing day and the Supreme Court was prompted to come up with the guidelines in *M/s Meters and Instruments Private Limited* v. *Kanchan Mehta.*[56]

The apex court tried to find solution in online mechanism to the huge pendency of cases by admitting that 20% of total pending cases are on section 138 of the NI Act as reported by the Law Commission in its 213th Report.[57] The Court opinioned that there appears now a need to classify cases which could be partly or entirely concluded online without physical presence of parties. The Court broadly outlined that where a case does not involve complicated questions of law, it can be decided online. It was held that if it is possible to file complaint along with affidavit online, process can be issued online, and accused can pay required amount online, then personal appearance of the complainant or accused can be dispensed with. It is only when accused insists then only need for appearance of the parties may arise which can be facilitated through

55 *Id.* at 4604.

56 *Id.* at 4594.

57 The Law Commission in its 213th Report presented on 24th November, 2008 mentioned that out of a total of 1.8 crore pending cases in the country (at that time), 38 lakh cases ( about 20% of total pendency) pertain to s. 138 of the NI Act.

their lawyer and where ever possible, appearance of the parties can be made through video-conferencing. The Court insisted that personal appearance can be replaced by suitable self-operating procedures.

The apex court ruled that it will be open to High Courts to classify different categories of the cases where proceedings or part thereof can be conducted online by designated courts or otherwise. The High Courts were given free hand to consider issuing any further updated direction for dealing with section 138 cases in light of this judgment.[58]

The Supreme Court in *N. Parameswaran Unni.* v. *G Kannan*[59] brought necessary clarity in the requirement of notice which is to be served under section 138[60] of the Negotiable Instruments Act (NI Act) that has far reaching implications.

The instant appeal was filed against the judgment of the Kerala high court which had allowed the criminal revision of the first respondent by setting aside the concurrent judgments of trial court and Appellate Court.

The appellant in the instant case had received two cheques from the first respondent and presented them to his bank on 04-04-1991 but were returned with an endorsement "Refer to drawer" and was received on 08-04-1991 by the appellant. The Appellant served a legal notice on 12-04-1991 to the first respondent that was returned with postal endorsement "intimation served, addressee absent" on 20-04-1991 and the same was received by the appellant's advocate on 25-04-91. The Appellant had again sent the legal notice on 04-05-1991 which was again returned with postal endorsement "Refused, returned to sender".[61]

The Appellant had lodged a private complaint before the Judicial Magistrate First Class-II for alleged offence under section 138 of the NI Act and after the full-

58 *Supra* note 56 at 4604.

59 AIR 2017 SC 1681.

60 S. 138 reads: Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount to other person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank, such person shall be deemed to have committed an offence and shall, without prejudice, to any other provision of this Act, be punished with imprisonment for a term—

Provided that nothing contained in this section shall apply unless——

(a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;

(b) the payee or the holder in due course of the cheque as the case may be, make a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

(c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice

61 *Supra* note 59 at 1684.

fledge trial and upon appreciating the documentary evidence adduced on behalf of the parties came to the conclusion that appellant was successful in proving the case beyond the shadow of doubt and convicted and sentenced the accused to undergo simple imprisonment of three months. This decision was challenged before Additional Sessions Judge who after perusing the records and on elaborate hearing upheld the trail courts findings.

Against this order, respondent preferred a criminal revision before the High Court and the only ground raised was that the provisions of section 138 of the NI Act cannot be invoked as the appellant had not complied with the conditions in clause (b) of the Proviso to the said section as the notice of dishonor of cheque was received by the appellant on 04-05-1991, whereas the intimation of the dishonour of the cheque to the accused was given on 08-04-1991 beyond the statutory period of 15 days. Hence section 138 was not satisfied and no offence was committed.

The High Court had allowed the revision by reversing the concurrent findings of the two courts below holding that the statutory notice was beyond the prescribed limitation period as mentioned in section 138 of the NI Act. Hence the present appeal before the apex court which had to decide whether the High Court was right in rejecting the case of the Appellant on the ground that though the first notice was issued by him within time to the correct address but the second notice was issued by him beyond the period of limitation as prescribed in section 138 of the NI Act.

The apex court observed that the bare reading of section 138 of the NI Act makes it amply clear that the object of this provision is to prevent and punish the dishonest drawers of cheques who evade and avoid their liability. Clause (b) further adds that the payee or the holder of the cheque in due course is necessarily required to serve a written notice on the drawer of the cheque within 15 days from the date of intimation received from the bank about the dishonour. Clause (c) gives an opportunity to the drawer of the cheque to make payment within 15 days of receipt of such notice sent by the drawee. It is clear that the object of this provision is to avoid unnecessary hardship. Where drawer has failed to make payment within 15 days of receipt of such notice, he shall be deemed to have committed an offence under the Act and the drawee shall be competent to file complaint against the drawer by following the procedure as laid down in section 142 of the NI Act.[62]

The apex court took the help of section 27 of the general clauses Act, 1897 and section 114 of the Indian Evidence Act, 1872 and ruled that once notice is sent by registered post by correctly addressing to the drawer of the cheque, the service of notice is deemed to have been effected and this process satisfies the requirements of section 138. However, the drawer is at liberty to rebut this presumption.

The apex court followed a long line of its own precedents[63] in which it was held that when a notice is sent by registered post and is returned with postal endorsement

62 *Ibid.*

63 See, for instance: *Jagdish Singh* v. *Natthu Singh*, (1992)1 SCC 647; *State of M.P.* v. *Hiralal*, (1996) 7 SCC 523; *V. Raja Kumari* v. *P. Subbarama Naidu*, (2004) 8 SCC 774.

"refused" or "not available in the house" or "house locked" or "shop closed" or " addressee not in station", then due service has to be presumed.

The Court observed that there is no bar under the NI Act to send reminder notice to the drawer of the cheque and if notice is this notice is sent, then such notice cannot be construed as an admission of non-service of the first notice by the appellant. Moreover, the first notice sent by Appellant on 12-04-1991 was effective and notice was deemed to have been served on the first respondent. Thus, it is clear that the second notice has no relevance at all in the present case. Second notice could be construed as reminder of respondent's obligation to discharge his liability. As the complaint was filed with the stipulated time contemplated under clause (b) of section 142 of the NI Act, therefore, section 138 read with section 142 is attracted.[64]

The apex court in *Harihara Krishnan* v. *J. Thomas*[65] added new requirements for prosecution under section 138 as, in the opinion of the apex court, this section does not prescribe the procedure for investigation. It is markedly different from the procedure for investigation contemplated under CrPC. The prosecution for an offence under section 138 commences on the basis of the written complaint made by the payee of the cheque which should understandably contain the factual allegations constituting each of the ingredients of the offence defined in section 138. The apex court outlined then the ingredients of section 138 as under:

(i) A cheque was drawn by a person on an account maintained by him with the banker (ii) This cheque was presented to the bank within a period of six months from the date it was drawn or within the period of its validity whichever is earlier (iii) This cheque is on its presentation returned by the bank unpaid (iv) The payee sent a demand notice to the drawer demanding the payment of amount mentioned in the cheque (v) This written request was made within a period of 30 days from the date of notice by the bank for dishonour of the cheque for want of funds. The apex court laid down that from this scheme it is quite obvious that each one of the above mentioned ingredient flows from a documentary evidence evincing the existence of such an ingredient. The only ingredient which does not require documentary proof is that the drawer failed to make payment within a period of 15 days inspite of the demand notice. This fact can only be asserted but not proved and it is the drawer who has burden to prove that he had made the payment pursuant to the demand.

**Vicarious Liability of Directors under The NI Act**

The Supreme Court in *Ashoke Mal Bafna* v. *M/s Upper India Steel Mfg. & Engg. Co. Ltd*[66] found the ruling of the subordinate courts below on vicarious liability of the Director for bouncing of cheque issued by the company so bizarre that it had almost passed strictures by holding that "the Magistrate is expected to examine the

64 *Supra* note 62 at 1684.

65 AIR 2017 SC 4125.

66 AIR 2017 SC 2854.

nature of allegations made in the complainant and the evidence, both oral and documentary, in support thereof and then to proceed further with proper application of mind to the legal principles on the issue. The superior court should maintain purity in the administration of justice and should not allow abuse of the process of court".[67]

The facts of the instant case were simple and should have been ably decided without inviting displeasure of the apex court. The appellant-director had issued cheques dated: 28-12-2004 with a validity period of six months but these cheques were not presented at the bank during their validity period. The Director resigned subsequently w.e.f, 2-1-2006 and the cheques issued by the company on 24-08-2018 which bounced due to insufficient funds were neither issued by the appellant nor was appellant involved in the day to day affairs of the company but still was convicted by the court below under section 141. The court in categorical terms held that for making a Director of a company liable for the offence committed by the company under section 141 of the Act, there must be specific averment against the Director. It must be shown to the satisfaction of the court how and in what manner the Director was responsible for the conduct of the business of the company.[68] Objectively, time of issue of the cheque and the role of the accused Director for issuing the cheque are two critical factors that have to be taken into account for determining the liability of such Director for issuing a cheque that has not been honoured for want of sufficient funds.

## V CONCLUSION

The present survey of the cases decided by various courts, including apex court, reveal that by and large purpose oriented interpretations have been given to achieve the legislative intent. The apex court has come up with out of box solutions to the huge pendency of the cases on section 138 of the NI Act alone but there are some cases in which courts have deviated from the established principles of law formulated by the earlier courts from time to time without any apparent advantage to the justice delivery processes.

The accepted principle of Contract Law is that an agreement between the competent parties may be made either orally or in writing and an oral contract is as valid as a written contract, except where law expressly provides that a contract must necessarily be in writing. The logical extension of this principles is that an offer may be in writing but its acceptance may be oral or even by conduct that has been now affirmed but of course without assigning sufficient reasons. Similarly, an innovative interpretation came to be witnessed in *Durga Krishna Store Private Limited,* to the provisions of the Indian Contract Act and Arbitration and Conciliation Act, 1996 so as to avoid conflict of interpretation by holding that even without any formally signed agreement between the parties would not affect either acceptance of contract or implementation thereof and arbitrators can be appointed on the basis of this agreement.

67 *Id.* at 2856.
68 *Ibid.*

The judgment of the Chhattisgarh high court in *R.P. Bhojanwala* has deviated from the established legal position on the subject by refusing right to the offeror to withdraw his offer before it is accepted. This interpretation is not only against the settled judicial interpretation but is also against plain language of sections 4 and 5 of the Contract Act which deal with communication and revocation of offer.

A beneficial construction was given by the court in *Life Insurance Corporation of India, Mumbai* by holding that the proposal submitted by the deceased during his life time together with premium as per rules in vogue free from any defect and the receipt issued by the corporation thereafter is sufficient proof that the contract was concluded before the death of the proposer and it is immaterial that the formal acceptance had not been communicated to the deceased.

An interpretation rooted to ground realities came to be seen in *Kumar Rohit* by adding a clarification to the commonly used expressions like "as is where is basis", or "as it is where it is basis" by holding that no legality is attached to the auction sale where knowledge of the defect in property cannot be imputed to an intending purchaser and these phrases cannot overcome the fatal defect of suppression of vital information.

The public policy doctrine was expanded so as to include principles like righteousness, good conscience and equity. It was also laid down that the statutory provisions, plain and unambiguous, cannot be read as against public policy and it cannot be invoked to facilitate a loanee to avoid legal obligation for repayment of a loan but its reverse is true. It is a pious duty to abide by the promise as goes old adage that *'oxen are tied by their horns and men by their promises'*. Timely re-payment ensures facilitation of the loan to others who may be needy. Public policy cannot be invoked to effectively prevent a loanee from repayment that would amount to unjustifiably abusing the law.

In *Suresh Kumar Wadhwa* the court re-enforced rigidity in contractual obligations by holding that mere earmarking of some money as a security or earnest money will not entitle the contracting party to forfeit it unless it is expressly declared as a stipulation in the contract. This will not only have given handle to the party committing breach of the contract but will raise further issues than providing answers to the issue in hand. For instance; Can intention of the parties through conduct be a substitute to an express declaration so vehemently emphasized by the apex court?

In *M/s Rasiklal Kantilal & Co.,* the apex court ruled that title of the goods should not be confused with the bailor's right to bail goods so long he is holding their possession. The title to the goods is irrelevant even in case of a bailment. The ownership of the goods bailed is not important but it is physical possession of the goods that determines bailment but care has to be taken to differentiated possession from custody which would mean that a servant or guest using host's goods is not a bailee.

In *Raghava Reddy,* a very important qualification was added to the bar of filing a civil suit imposed in section 69 of the Partnership Act. The court ruled that the critical date for registration of the firm is not when the agreement was executed but when the suit was registered. A very useful interplay between section 69 of the Partnership Act and Arbitration Act was enunciated in *Syed Irfan Sulaiman* by giving effect to the arbitration even in case of unregistered firms.

A land mark judgment in *M/s Meters and Instruments Private Limited* was pronounced by the apex court in which eight cardinal principles were formulated for the subordinate courts to deal with offences relating to dishonour of cheque as provided in section 138 of the NI Act. The net effect of these principles is to find out solution to the nonpayment of money to payee and not to insist on the imprisonment of the accused which should be the last resort. This change in court's shift in stance is due to a large number of pending cases on section 138 as pointed out by 213th Law Commission Report.

The court also found solution to the pendency of suits under section 138 in online resolution and held that if it is possible to file complaint along with affidavit online, process can be issued online, and accused can pay required amount online, then personal appearance of the complainant or accused can be dispensed with. Personal appearance can be asked only at the insistence of the accused which can be facilitated through their lawyer and where ever possible, help of video-conferencing can be taken for facilitating personal appearance and court laid down emphasis for suitable self-operating procedures in place of personal appearance.

On the principle of vicarious liability of Directors for bouncing of cheque for want of insufficient funds, it has been held in categorical terms that for establishing vicarious relationship for holding a Director of a company liable for the offence committed by the company under section 141 of the Act, there must be specific averment against the Director describing in detail how Director is responsible for issuing a cheque which the bank could not honour for want of funds. The court brought it down to two objective points; one, the timing at which cheque was issued by the company and two, the role of the accused Director in issuing the cheque in question that was dishonoured by the Bank for want of funds.