

CRR No.2404 of 2015

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17.11.2015

Shri Suresh Agrawal, learned counsel with Ms. Vijya Yadav, learned counsel for the petitioner.

Shri D.K.Pathak, learned counsel for the respondent.

Heard counsel for the parties.

This reference arises pursuant to the order passed by the learned Single Judge dated 02.09.2015 in CRR No.840/2011 (Gwalior Bench). Two questions have been formulated by the learned Single Judge for consideration by the Larger Bench, having found that the view taken by another learned Single Judge on the said issues was not correct. The same read thus:-

- (i) Whether, the compounding fee as applicable in Negotiable Instruments cases pursuant to the judgment of **Damodar S. Prabhu (supra)** is applicable to cases which are compounded after 3.5.2010 retrospectively irrespective of the date on which the cheque is executed?
- (ii) Whether cases of compounding of cases under Negotiable Instruments Act, if the cheque dated is prior to pronouncement of judgment in **Damodar S. Prabhu (supra)** i.e. 3.5.2010, the compounding fee is not leviable?

2. As regards the first question, the same is answered in paragraph 16 of the decision of the Supreme Court in the case of **Damodar S.Prabhu Vs. Sayed Babalal H.**

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reported in **2010 (4) MPLJ 257**. From the last sentence of paragraph 16, it is amply clear that the directions given by the Supreme Court (as noted in paragraph 15), should be given effect prospectively.

3. As per the guidelines formulated by the Supreme Court, compounding of such cases can be allowed at different stages of the proceedings – pending before the Trial Court or Appellate Court or for that matter Revisional Court, as the case may be. Depending on the stage during which the compounding application is made, the amount towards compounding cost has been specified. That, however, can be and ought to be levied on case to case basis. Thus, the fact that the cheque is issued prior to 3rd May, 2010 – on which date the Supreme Court formulated the guidelines, will make no difference. Accordingly, the first question formulated by the learned Single Judge does not require any further elaboration and is **answered** accordingly.

4. Reverting to the second question, the same is another shade of the first question. As aforesaid, even if the date of cheque is prior to pronouncement of the judgment in **Damodar S. Prabhu's** case, that will make

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no difference. The relevant fact to be kept in mind is: when the compounding application is made and is being considered. Not the date on which cheque is issued.

5. Whether the Court has discretion to reduce the amount towards compounding cost has also been answered by the Supreme Court in its recent decision in the case of **Madhya Pradesh State Legal Services Authority Vs. Prateek Jain & Anr.** reported in **2015 (1) SCC (Cri) 211**. In paragraphs 25 and 26 of said decision, the Supreme Court observed thus:-

“25. What follows from the above is that normally costs as specified in the guidelines laid down in the said judgment has to be imposed on the accused persons while permitting compounding. There can be departure therefrom in a particular case, for good reasons to be recorded in writing by the concerned Court. It is for this reason that the Court mentioned three objectives which were sought to be achieved by framing those guidelines, as taken note of above. It is thus manifestly the framing of “Guidelines” in this judgment was also to achieve a particular public purpose. Here comes issue for consideration as to whether these guidelines are to be given a go by when a case is decided/settled in the Lok Adalat? Our answer is that it may not be necessarily so and a proper balance can be struck taking care of both the situations.

26. Having regard thereto, we are of the opinion that even when a case is decided in Lok Adalat, the requirement of following the guidelines contained in

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Damodar S. Prabhu (supra) should normally not be dispensed with. However, if there is a special/specific reason to deviate therefrom, the Court is not remediless as Damodar S. Prabhu (supra) itself has given discretion to the concerned Court to reduce the costs with regard to specific facts and circumstances of the case, while recording reasons in writing about such variance. Therefore, in those matters where the case has to be decided/settled in the Lok Adalat, if the Court finds that it is a result of positive attitude of the parties, in such appropriate cases, the Court can always reduce the costs by imposing minimal costs or even waive the same. For that, it would be for the parties, particularly the accused person, to make out a plausible case for the waiver/reduction of costs and to convince the concerned Court about the same. This course of action, according to us, would strike a balance between the two competing but equally important interests, namely, achieving the objectives delineated in Damodar S. Prabhu (supra) on the one hand and the public interest which is sought to be achieved by encouraging settlements/resolution of case through Lok Adalats.”

(emphasis supplied)

6. Suffice it to observe that the amount towards compounding cost specified in the guidelines framed by the Supreme Court in the case of **Damodar S.Prabhu (supra)** can be reduced by the Court, on case to case basis, after recording reasons therefor. That is the discretion of the concerned Court which will have to be exercised judiciously. Besides this, nothing more is required to be said. The second question also stands **answered** accordingly.

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7. As the reference has been answered, the matter be sent back to the Gwalior Bench. To be placed before the appropriate Bench for further consideration.

(A. M. Khanwilkar)
Chief Justice

(Sanjay Yadav)
Judge

AM.