

## **Second or successive statutory notice can also form basis of proceedings under S.138, NI Act, 1881.**

In the recent judgment dated September 26, 2012 in the matter of *MSR Leathers vs. S. Palaniappan & Anr*, Hon'ble Supreme Court has pronounced a crucial change in the jurisprudence of proceedings under s.138 of the Negotiable Instruments Act, 1881. The said judgment delivered by a full bench comprising of Justices Mr. R M Lodha, Mr. T S Thakur and Mr. Anil Dave stated that [a payee or holder of a cheque can now issue a statutory notice to the drawer each time the cheque is dishonoured and institute proceedings on the basis of a second or successive statutory notice as well.](#)

This judgment overturned the Hon'ble Supreme Court's decision in *Sadanandan Bhadran vs. Madhavan Sunil Kumara* (1998) 6 SCC 514. In the 1998 matter, the Supreme Court had to address the issue: "whether a holder of a cheque can initiate proceedings under s.138 of the Negotiable Instruments Act, 1881 for the second time if he has not initiated any action on an earlier cause of action?" The above issue was answered in the negative by the Court which went to hold that a combined reading of sections 138 & 142 of the NI Act left no room for doubt that cause of action under section 142(b) can arise only once. The court in the 1998 decision had further held that "*while a second or successive presentation of the cheque is legally permissible so long as such presentation is within the period of six months or the validity of the cheque whichever is earlier, the second or subsequent dishonor of the cheque would not entitle him to institute legal proceedings against the drawer in the event he fails to arrange the payment*". In the matter of *MSR Leathers vs. S. Palaniappan & Anr*, Hon'ble Supreme Court analyzed the correct provisions of law as well as the reasons adopted by the Court in *Sadanandan Bhadran vs. Madhavan Sunil Kumara* and accordingly, the Full Bench held as follows,

*"[A] prosecution based on a second or successive default in payment of the cheque amount should not be impermissible simply because no prosecution based in the first default which was followed by a statutory notice and a failure to pay had not been launched. If the entire purpose underlying Section 138 of the Negotiable Instruments Act is to compel the drawer to honour their commitments made in the course of their business or other affairs, there is no reason why a person who has issued a cheque which is dishonored and who fails to make payment despite statutory notice served upon him should be immune to prosecution simply because the holder of the cheque has not rushed to the court with a complaint based on such default or simply because the drawer has made the holder defer prosecution promising to make arrangements for funds or for any other similar reason. There is in our opinion no real or qualitative difference between a case where default is committed and prosecution immediately launched and another where the prosecution is deferred till the cheque presented again gets dishonored for the second or successive time."*