

IN THE COURT OF THE JUDGE COURT OF SMALL CAUSES
AND A.C.J.M, AT BENGALURU

Dated this the 02nd day of December-2024

PRESENT:

Smt.Nirmala.M.C, B.com., LL.B,
Judge & ACJM, Court of Small Causes, Bengaluru.

CC No.3943/2023

Complainant:

Smt.Anu Balaji,
W/o.Dr.T.S.Balaji Prasad,
Aged about 57 years,
R/at No.1, Lea Walk,
Ryton on Dunsmore,
Coventry,
CV8 3QD, Midlands,
United Kingdom.

Rep. By her brother and Power of Attorney
Holder Sri.T.S.Chandrashekar,
S/o.Sri.V.Shankarnarayan,
Aged about 61 years,
R/at No.63,
'Srimatha', 5th Cross,
N.R.Colony,
Bengaluru – 560 019.

(By Sri.K.P.Vishwanath - Adv.)

-Vs-

Accused:

Sri.Abhiram S Babi
S/o. K.V.Sathyanarayana Babu,
Aged about 32 years,
Partner,
M/s.RS Developers,
No.10, Pampa Mahakavi Road,
Shankarpuram,

Bengaluru – 560 004.

(By Sri. V.Krishna Murthy - Adv.)

Provision under which the application is filed	:	143-A of N.I.Act
Relief Sought for	:	Interim Compensation
The date on which the application is filed:	:	29.02.2024
Number of the application:	:	-
The date on which the objections are filed by different opponents:	:	20.03.2024
The date on which the orders were passed on the said application:	:	02.12.2024

// ORDERS //

The present application has been filed by the complainant u/Sec 143(A) of N.I. Act seeking interim compensation.

2. It is stated in the application that on several occasions, summons have been issued by this Hon'ble Court, despite service of summons he did not appear before the Court and he has scant respect to this Hon'ble Court and later issued non bailable warrant against the accused. Hence sought for allowing the application and direct the accused to pay 20% of the cheque amount as interim compensation.

3. On the other hand, the learned counsel for accused has filed detailed objection stating that the application filed by the complainant is not maintainable either in law or on facts and the same is liable to be dismissed. The complainant contended that accused is a partner of the firm M/s.Om Sai Builders and Smt.P.Aruna Prasad is the Others Partner. The Firm is the developer of the apartment complex known as "Sirsi Heights, bearing No.96 (Old No.94), Mysore Road, Bengaluru and the apartment bearing No.404 is one of the units in the said apartment complex and in that context settlement of certain financial transaction took place between the accused and the complainant, the Firm, acting as the General Power of Attorney Holder. Both of the them entered into execution of Sale Agreement consideration amount of Rs.63,00,000/- and undertook to pay the Firm at the time of registration of the Sale Deed a sum of Rs.13,00,000/- being the balance sale consideration. As per Sale Agreement agreed to repay the sale consideration amount of Rs.50,00,000/- and also pay Rs.25,00,000/- as reimbursement of expenses incurred and order to secure the payment of the aforesaid sum of Rs.75,00,000/- had issued three cheques bearing Nos.252232, 252233 & 252235 for Rs.25,00,000/- each drawn on State Bank of India, Sajjan Rao Circle,Bengaluru – 560004 in favour fo the complainant. Even after expiry of period of 90 days stipulated in the Settlement Arrangement, which coincided with the expiry of 3rd day of December, the Firm did not keep up its undertaking. Further, it is clear that the entire alleged transaction are Civil in nature, in respect to alleged agreements. The only course open to the

complainant is to seek specific performance in respect of the alleged breach of covenants of the agreements. The complaint filed by the complainant is not maintainable and she is not entitled to maintain the complainant before this Hon'ble Court. Hence, prays to reject the application.

4. Heard arguments and perused the records.

5. The points that arise for my consideration are as follows:

1. Whether the complainant has made out grounds to allow the application filed u/Sec 143A of NI Act?

2. What Order?

6. My findings to the above said points for my consideration are as under:

Point No.1: In the **Negative**;

Point No.2: As per final order for the following:

REASONS

7. **Point No.1:** The records shows that the complainant has filed this case against the accused alleging the offence punishable u/Sec 138 of N.I Act. Both of the them entered into execution of Sale Agreement consideration amount of Rs.63,00,000/- and undertook to pay the Firm at the time of registration of the Sale Deed a sum of Rs.13,00,000/- being the balance sale consideration. As per Sale Agreement agreed to repay the sale consideration amount of Rs.50,00,000/- and also pay

Rs.25,00,000/- as reimbursement of expenses incurred and in order to secure the payment of the aforesaid sum of Rs.75,00,000/- had issued three cheques bearing Nos.252232, 252233 & 252235 for Rs.25,00,000/- each drawn on State Bank of India, Sajjan Rao Circle, Bengaluru – 560004 in favour of the complainant. Even after expiry of period of 90 days stipulated in the Settlement Arrangement, which coincided with the expiry of 3rd day of December, the Firm did not keep up its undertaking. Further, it is clear that the entire alleged transactions are Civil in nature, in respect to alleged agreements. The only course open to the complainant is to seek specific performance in respect of the alleged breach of covenants of the agreements. The complaint filed by the complainant is not maintainable and she is not entitled to maintain the complaint before this Hon'ble Court. Even after expiry of period of 90 days stipulated in the Settlement Arrangement, which coincided with the expiry of 3rd day of December, the Firm did not keep up its undertaking. Further, it is clear that the entire alleged transactions are Civil in nature, in respect to alleged agreements. The only course open to the complainant is to seek specific performance in respect of the alleged breach of covenants of the agreements. The complaint filed by the complainant is not maintainable and she is not entitled to maintain the complaint before this Hon'ble Court. Hence complainant got issued the notice and filed the complaint.

8. I have perused all the materials available on record with cautiously. As stated above, the accused has filed detailed objections and sought for rejecting the application.

9. At the time of argument the learned counsel for complainant has vehemently argued and requested the court to award interim compensation as prayed in the application. On the other hand, the learned counsel for accused has argued that the averments of the complaint disclosed, the case is civil in nature. Hence, the complaint is not maintainable. On this ground, complainant prays the Court to reject the application.

10. I have perused the entire materials available on record. No doubt the present application is filed under Sec.143A of NI Act seeking direction against the accused to deposit 20% of cheque amount as interim compensation. The records also shows that the accused appeared before the court and enlarged on bail and pleaded not guilty. If an application is filed under Sec.143A of NI Act, then how to dispose such application and what are the powers conferred on Magistrate to dispose such application are elaborately considered in some of the judgments of Hon'ble High Courts. In this regard, I would like to rely judgment in Cri.OP No.15438 and 15440/2019 (L.G.R Enterprises and other V/s P. Anabazhagan) the Hon'ble Madras High Court has held that - "the granting of interim compensation is a discretionary power vested with the trial Court and must be supported by reasons". In Cri.Pn No.6878/2019,(Smt. Usha T.R. V/s Sri B.H.Venkatachalaiah) the

Hon'ble High Court of Karnataka held that - "the application U/Sec. 143-A of N.I.Act must be disposed by assigning reasons". In Crl.Pn No.201213/2020,(Jahangir S/o Lalsab Nadaf V/s Farooq Ahmed Abdul Razak)) the Hon'ble High Court of Karnataka held that – "the Court while disposing the application U/Sec.143-A of N.I.Act exercise its discretionary power in a judicious way." In Crl.Pn No.632/2022, (Mr V Krishamurthy V/s Diary Classic Ice Creams Pvt Ltd) the Hon'ble High Court of Karnataka observed and held that-"while disposing application U/Sec.143-A of N.I.Act to notice the conduct of the accused that if the accused has been unnecessarily evading the proceedings by seeking exemption consideration of the application would become imperative and the amendment itself is introduced to compensate such payees of tactics adopted by unscrupulous drawers of cheques". in Crl.Pn.No.100261/2022,(Smti Vijaya V/s Shekharappa and another) the Hon'ble High Court of Karnataka, Dharwad Bench held that – "awarding compensation u/Section 143-A of N.I.Act is not mandatory but it is discretionary vested with the Magistrate to exercise power to direct the drawer of the cheque to pay 20% of the compensation amount as an interim prayer by assigning reasons."

11. The ratio and dictum of the above referred judgments are that the application filed U/sec 143-A of NI Act must be disposed by assigning reasons and awarding compensation is not mandatory and it is a discretionary power of the court. Therefore by keeping these principles of law let me discuss the application of

present case on hand. Hence, the present interim application has been filed by the complainant.

12. Now it is better to re-produce the amendment to NI Act by inserting section 143A. The Section 143A of the Act reads as follows:

"143A. Power to direct interim compensation.-- (1)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court trying an offence under Section 138 may order the drawer of the cheque to pay interim compensation to the complainant--

(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and

(b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year,

within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under Section 421 of the Code of Criminal Procedure, 1973(2 of 11974).

(6) The amount of fine imposed under Section 138 or the amount of compensation awarded under Section 357 of the Code of Criminal Procedure, 1973(2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

13. As stated above the accused has taken some contentions in his objection and prayed for rejecting the application. Whatever contentions taken by the accused cannot be considered at this stage and those contentions can be considered only after full fledged trial of the case. Further the merit of the case cannot be discussed at this juncture since it is only adjudicating of interlocutory application. As stated above the substance of accusation were already read over and accused pleaded not guilty and claims to be tried. It is material to note that, dated 29.02.2024, the substance of accusation were read over and accused pleaded not guilty and claims to be tried. Hence case was posted for cross examination of PW1. On next date of hearing the present application has been filed by the complainant seeking interim compensation. Awarding interim compensation U/sec 143(A) of NI Act is a discretionary power not a

mandatory power, because in the said provision the word 'MAY' has been used. This ratio has been held by Hon'ble Apex Court in a case between **RAKESH RANJAN SHRIVASTAVA V/s THE STATE OF JHARKHAND & ANR. (CRIMINAL APPEAL NO. 741 OF 2024)**. Further the conduct of the accused is also important while considering the application filed under Sec.143A of NI Act. In this regard in a judgment cited above **Mr V Krishnamurthy** supra held that the conduct of the accused that he is unnecessarily evading the procedure then consideration of the application would become imperative. Perused the order sheet, it shows that accused is not unnecessarily evading the evading the proceedings.

14. The complainant alleging that he had paid Rs.75,00,000/- to the accused and in order to discharge the liability accused had issued the disputed cheques. But on the other hand, accused is not admitting the transaction as well as issuance of cheque and its signature. Therefore, it appears that there are serious dispute about transaction and issuance of cheque. Hence I am of the opinion that the complainant has not made out prima facie case to allow the application. Hence I am the view that at this juncture there are no sufficient grounds to allow the application and awarding interim compensation by exercising discretionary power as contemplated under the above Act. Therefore, with light of the above observation and discussion I answer **Point No.1 in the Negative**.

15. **Point No.2:** For the aforesaid reasons court proceed to pass the following:

SCCH-9

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ORDER

The application filed by complainant
u/Sec.143(A) of N.I Act is hereby rejected.

No order as to cost.

(Dictated to the stenographer, corrected by me and then
pronounced by me in the open court on this the 02nd day of
December, 2024.)

**(NIRMALA.M.C.)
Judge & ACJM,
Court of Small Causes,
Bengaluru.**