

MHKO180001042023



ORDER BELOW EXH.23 IN S.C.C. NO.44/2023
[Vilas @ Sunil Krushna Gurav v. Rajendra
Marutrao Khade]

This is an application under Section 143-A of the Negotiable Instruments Act, 1881 (In short 'the N.I.Act') for grant of interim compensation from the accused.

02. The complainant has averred that, he has filed present complaint for dishonour of cheque of Rs.2,95,000/-. Hence, he prayed that, as per Section 143-A of the N.I.Act, the accused may be directed to deposit sum of 20% of the cheque amount towards interim compensation till disposal of the complaint.

03. The accused has strongly resisted present application by filing his vide Exh.24. He contended that, Section 143-A of the N.I.Act is discretionary and not mandatory. The complainant has not made out prima facie case to grant present application. No justifiable ground is mentioned in the present application in order to grant interim compensation. The application is devoid of merits. The complainant has failed to make out a case for grant of interim compensation in his favour. If present application is allowed, it will cause more hardship to the accused. Hence, the accused prayed that, the application may be rejected.

04. Points for determination along with my findings and reasons therefor are as below :-

POINTS

FINDINGS

- | | |
|--|------------------------------|
| 1) Whether the complainant is entitled for interim compensation under Section 143-A of the N.I.Act ? | ... No. |
| 2) What Order ? | ... Application is rejected. |

05. Heard learned advocate Shri. D.D.Magdum for the complainant and learned advocate Shri. M.S.Jadhav for the accused, at length. Arguments are set forth in consonance of their pleadings.

06. Learned advocate Shri. D.D.Magdum has vehemently argued that, the complaint and present application fulfill the requirements of Section 138 of the N.I.Act. The complaint is filed within the limitation. Hence, he prayed that, present application may be allowed.

07. On the contrary, learned advocate Shri. M.S.Jadhav strenuously argued that, Section 143-A of the N.I.Act is directory and not mandatory. The complainant has not prima facie shown that, this is a fit case to exercise discretion under Section 143-A of the N.I.Act by this Court. Hence, he prayed that, present application may be rejected.

:: REASONS ::

AS TO POINT NO.1 :-

08. On perusal of record and proceeding it appears that,

present complaint has been filed on 03.02.2023. Plea of the accused has been recorded vide Exh.21 on 05.11.2024 wherein the accused pleaded not guilty. When the matter is pending for evidence of the complainant, the complainant has filed present application under Section 143A of the N.I.Act.

09. Bare perusal of Section 143A of the N.I.Act indicates that, the Court trying an offence under Section 138 of the N.I.Act, may direct the drawer of the cheque to pay interim compensation to the complainant i.e. amount not exceeding 20% of the cheque amount. The sub-section (4) of Section 143A of the N.I.Act provides that in case the drawer of the cheque is acquitted, the Court shall direct the complainant to repay the same amount to the drawer.

10. At this stage, it would be necessary to refer to decisions that particularly deal with the aim, object, nature and applicability of Section 143A of the N.I.Act. In the case of **Ashwin Ashokrao Karokar v. Laxmikant Govind Joshi**, [2023 (1) Mh.L.J. 147], the Hon'ble Bombay High Court held that :-

“9.4. Section 143-A of the N.I.Act, though enacted with an intent to ensure speedy disposal of the proceeding pending under Section 138 of the N.I.Act, the said intent, in so far as Section 143-A of the N.I.Act is concerned, does not make the provision mandatory, as what is conferred upon the Court by virtue of the said provision is a discretion to direct interim compensation and no right is created in the complainant under it, to demand the entitlement to compensation. Grant of interim compensation, would be at the discretion of the Court, based upon consideration of various

factors, such as (a) whether the requirements of Section 138 of the N.I.Act, were fulfilled (b) whether the pleadings disclose the drawing of the presumption (c) whether the proceedings were within limitation and (d) whether prima facie a legal debt or liability was disclosed from the complaint or the notice of demand preceding it, and factors as such.”

11. In the case of **Ashwin Ashokrao Karokar (Supra)**, the Hon’ble Bombay High Court further held that, “the provisions of Section 143-A of the N.I.Act are directory and not mandatory. The Court has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the fact position availing, that it is a case which deserves award of interim compensation, which can be anywhere upto 20% of the cheque amount.”

12. In the case of **Rakesh Ranjan Shrivastava v. The State of Jharkhand and Anr. [2024] 3 S.C.R. 438**, the Hon’ble Supreme Court held that :-

19. Subject to what is held earlier, the main conclusions can be summarised as follows :

a. The exercise of power under sub-section (1) of Section 143A is discretionary. The provision is directory and not mandatory. The word “may” used in the provision cannot be construed as “shall.”

b. While deciding the prayer made under Section 143A, the Court must record brief reasons indicating consideration of all relevant factors.

c. The broad parameters for exercising the discretion under Section 143A are as follows:

i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.

iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.

iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc. v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.

13. In view of above well settled legal propositions, while dealing with an application under Section 143A of the N.I.Act, the Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration while deciding an application under Section 143A of the N.I.Act.

14. In the case at hand, the complainant has alleged that, in the month of August-2021, the accused asked the complainant for hand loan of Rs.9,00,000/-. Due to cordial relationship with the accused, the complainant gave total amount of Rs.8,95,000/- to the

accused between 20.08.2021 to 12.10.2021. It is the case of the complainant that, in addition to surplus of his Dhanshree Furniture Shop, he obtained gold loan in order to give amount of Rs.8,95,000/- to the accused. Thus, the complainant has raised amount of Rs.8,95,000/- from gold loan and surplus of his Dhanshree Furniture Shop. The complainant further contended that, in order to repay amount of Rs.2,95,000/- out of total amount of Rs.8,95,000/-, the accused has handed over disputed cheque to the complainant and said cheque is dishonoured.

15. In the backdrop of above peculiar facts and circumstances, at this preliminary stage, the complainant should have filed on record prima facie documentary evidence to show that he raised amount of Rs.8,95,000/- from gold loan and surplus of his Dhanshree Furniture Shop. It was easily possible for the complainant to file on record such prima facie documentary evidence in the form of his bank details, ledger account book of his Dhanshree Furniture Shop, his gold loan account statement, etc. However, the complainant has not filed on record any such prima facie documentary evidence for the reason best known to him.

16. It is well settled law that, provision under Section 143A of the N.I.Act is directory and not mandatory. At this preliminary stage, in absence of above mentioned prima facie documentary evidence on record, it would not be just and proper to exercise discretion under Section 143A of the N.I.Act. Therefore, in view of above peculiar facts and circumstances, if the case in hand is examined in the light of decisions in the case of **Rakesh Ranjan**

:: 7 ::

Order Below Exh.23 in S.C.C. No.44/2023.
[CNR-MHKO18-000104-2023]

Shrivastava (Supra) and **Ashwin Ashokrao Karokar (Supra)** it appears that, this is not a fit case to grant interim compensation. Hence, I answer as to point No.1 in the negative and in answer to point No.2, I pass following order :-

:: ORDER ::

Application (Exh.23) is rejected.

[Dictated and pronounced in the open Court.]

Kurundwad.
Date : 20.12.2025.

[Balasaheb S. Gaikwad]
Judicial Magistrate First Class,
Court No.1, Kurundwad.