MHLA120003942020

STC NO.01/2023
Ambadas Vs. Omkar

ORDER BELOW EXH.62

1] This application is moved by the complainant under Sec.143-A of Negotiable Instruments Act, 1881, seeking a direction to accused persons to deposit 20% of cheque amount as interim compensation. In the instant case plea of the accused is recorded and evidence of the complainant has commenced as he has filed his evidence affidavit at Exh-63.

2] The complainsnt states that accused nos. 2 is Chairman and accused no. 3 is Director of 'Omkar Sugar Factory, Pvt. Ltd.,' Chandapuri. Whereas the complainant runs firm under name and style “Deepak Kirana & Bhusar Oil Merchant”, at Nilanga. Therefore, complainant and accused have business relations. Accused nos. 2 & 3 due to their financial crisis borrowed loan of Rs. 7, 26,00,000/- on assurance to supply sugar to the complainant. But neither accused persons supplied sugar nor repaid the loan amount. Due to which the complainant had to suffer heavy financial loss. Thereafter, on demand and request to repay said amount the accused had issued two cheques bearing no. 502677 & 502678 of State Bank of India, Kharadi-Magarpatta, Branch. However, said cheques were dishonored with reason 'Funds Insufficient'. Therefore, the complainant was constrained to file the present complaint. The complainant states that, in view of sec 143-A of Negotiable Instrument Act, 1881 it is mandatory for accused persons to deposit interim compensation of 20% of the disputed cheque amount. Hence, prayed to allow the application. Ld. Advocate for complainant relied upon following case laws:-

1) **Rakesh Ranjan Shriwastawa Vs. State of Jharkhand and Anr : 2024 Live Law (S.C) 235**
2) **Guljama Sha Jahir Shah Vs. Shri Sadguru Kaka Stone Crusher 2024 ALL MR (Cri) 440**
3) **Firoz Shah & Ors Vs. State of Maharashtra 2024 ALL MR (Cri) 443**
4) **Amit Digvijay Singh Vs. Gokuldas Jagannath Bhutada and another 2019 ACD 1103 BOM**

3] Accused have resisted this application by filing their say at Exh-69 on the ground that the complainant had prepared false and fabricated documents and concocted the story. It is contention of the accused that they have not signed disputed cheques. Further it is contended that bank memos of ICICI Bank, Nilanga and State Bank of India, Nilanga, show different reasons for dishonor of cheques. Therefore, complainant is not entitled for interim compensation as claimed. Hence, this application is deserved to be rejected. Ld. Advocate for accused relied upon following case laws:-

1) **Rakesh Ranjan Shriwastawa Vs. State of Jharkhand and Anr : 2024 Live Law (S.C) 235**
2) **Mr. Ashwin Ashokrao Karokar & Ors Vs. Mr. Laxmikant Govid Joshi & Ors 2023 ALL MR(Cri)587**

4] Perused the application and say. Heard both learned advocates for respective parties. Before adverting to decide contentious issue it is pertinent to note that, the amended provision of Negotiable Instrument Act, 1881 aims to reduce the pendency of cases under N.I.Act and delaying the trial. The essence of the amended provision which is drawn towards faster disposal of the N.I. Act case which may come out as a boon to the present system. Though word 'may' is used in section 143-A the discretion is given to the court. Now, from the facts of present case it is to be seen whether such discretion to pay interim compensation is to be exercised or not.

5] The ration of Hon'ble Supreme Court in judgment of **Rakesh Ranjan Shriwastawa Vs. State of Jharkhand and Anr : 2024 Live Law (S.C) 235** relied upon by both the complainant and accused assumes importance wherein Hon'ble Supreme Court held that,

" an order directing the accused to pay interim compensation to the complainant shouldn't be passed mechanically but 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 under sub-section (1) of the Section 143-A while deciding the application seeking interim compensation.

"The presumption under Section 139 of the N.I.Act, by itself, is no ground to direct the payment of interim compensation. The reason is that the presumption is rebuttable. The question of applying the presumption will arise at the trial. Only if the complainant makes out a prima facie case, a direction can be issued to pay interim compensation", the court observed."

"The Court will have to consider various factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, and the paying capacity of the accused", the court added.

"In a nutshell, the court said that while deciding the prayer made under Section 143-A the Court must record brief reasons indicating consideration of all the relevant factors.”

6] On perusing the record it reveals that no case for exercise of discretionary power to grant interim compensation to the complainant is made out at this stage for the following reason:-

a) The case was instituted on 2/1/2023 wherein accused was summoned on the very first date i.e. 8/6/2023 . Thereafter the case was listed for appearance on 21/6/203. The accused no. 1 & 2 appeared on 21/6/2023 whereas the accused no.3 suo motu appeared on 21/6/2023. Thereafter, on 21/2/2024 plea of accused was recorded . The case is now posted for evidence of complainant.

b) The proceedings have been conducted reasonably expeditiously and almost on every hearing has been an effective date of hearing with both parties duly represented.

c) The defence of accused in the reply to this application that disputed cheques were neither presented in the bank nor were dishonoured. It is contended by accused that the complainant had prepared false and fabricated bank memos. Primafacie on perusal of bank memos of State Bank Of India, Nilanga it shows reason 'Funds insufficient' for dishonour of cheques bearing no. 502677 and 502678. Whereas, memo of ICICI Bank, Nilanga shows reason “Payment stopped by drawer” for dishonor of disputed cheques. Further it is contention of accused that disputed cheques were never deposited in the State Bank of India Nilanga. It is worthy to note here that the letter dtd 29/10/22 of State Bank of India, Kharadi-Magarpatta branch filed by accused on record along with Exh. 181 shows that the home branch Kharadi-Magarpatta branch had endorsed on said letter that disputed cheques were never presented to State Bank of

India,Kharadi-Magarpatta branch therefore, cheque return memo is unavailable. Hence, defence taken by accused prima facie appears to be plausible. On considering the above discussion and in view of ratio laid by Hon'ble Apex court that sec 143-A is not mandatory I conclude that it is not fit case for exercising discretionary power. With due respect to ratio laid down by Hon'ble Apex Court in cited case laws but except case law referred above, facts of the present case and that in cited case laws are different. Hence, same are not applicable to case in hand. Therefore, I proceed to pass following order:-

ORDER

Application Exh.62 is hereby rejected.

DISTRICT COURTS MAHARASHTRA

Digitally signed by REENA DEEPAK KHARATE
Date: 2024.06.24 17:48:13 +0530

(R. D. Kharate)

Date:24/06/2024

Judicial Magistrate First Class,
Nilanga