

**IN THE COURT OF V ADDL. SMALL CAUSES JUDGE AND XXIV
A.C.M.M. Court of Small Causes Mayo Hall Unit, Bangalore.
(SCCH.20)**

Dated this the 4th day of March, 2023

Present: **Smt.Sharmila C.S. BA.L., LL.M**
V Addl. Small Causes Judge,
& XXIV A.C.M.M.

CC.No.15052/2022

Complainant : Sri.Munikumarvatambeti,
S/o Munikrishnaiah
Aged about 41 years,
Prop; SLV Builders & Developers
Flat NO.401, SLV Sunshine Aparments
A cross, Vijaya Bank colony
Banaswari, Bangalore - 560 043

-Vs-

Accused : Sri.Harish.B.M
S/o Sri.Munishamiah
Aged Major,
Residing at 76, Byatha,
Bangalore North Taluk,
Bangalore – 560089

ORDERS ON APPLICATION UNDER SECTION 143A of
N.I.Act

The application is filed by the complainant seeking deposit of
20% of compensation amount to the complainant.

2. It is stated in the application that at the time of recording of plea the accused has denied the charges levelled against him. That as per new amendment prays to direct the accused to deposit 20% of cheque amount to the N.I.Act.

3. Per contra, the counsel for the accused filed detailed objections which he submits is his defence in the case and prays to dismiss the application. The said objections which are in detailed will be discussed at later stage.

4. Heard from the counsel for the complainant and the accused.

5. The following points arise for my determination.

POINTS

1. Whether there are sufficient grounds made out to order for Interim compensation from the accused?
2. What order.?

6. My findings to the aforesaid points are as follows.

Point no.1 : in the negative

Point no.2 : as per the final order

for the following.

REASONS

7. **POINT No.1:-** This complaint is filed under section 200 of Cr.P.C, alleging offence punishable Under section 138 of the Negotiable instruments Act 1881 and was filed on 28.11.2018 for which the amendment of provision section 143A of N.I.Act is absolutely applicable. The accused has appeared and denied the accusation made against him and submits that he has defence to make. Therefore the present application came to be filed.

8. The counsel for the complainant submits that as per new amendment act, the accused is to be directed to pay 20% compensation, which is mandatory, since he is denying the charges levelled against him. That he would repay the same if the accused is acquitted. Thus prays to allow the application. Per contra, the counsel for the accused has filed detailed objections which shall be discussed now.

9. As per the accused, he has admitting the transaction with the complainant. As per the complainant, the cheques were issued by accused to the complainant with regard to the sale deed of two plots being 214, and 414, of Sai Krishna Enclave, K.R.Puram, Bangalore of which the copy of sale deeds are also produced before this court and are already marked as Ex.P.9 and P.10. On going through the same, I notice that the accused is purchaser of the properties from the complainant, who is the registered GPA holder and proprietor of M/s SLV Builders and Developers and purchased on 28.10.2015 and 19.10.2015. Therefore the accused relied upon these 2 sale deeds wherein it is noted that the alleged cheques were issued by the accused to the complainant on the said dates i.e., on 28.10.2015 and 19.10.2015 respectively. The cheques involved in the present case are bearing No.000058 for Rs.63,00,000/- and bearing No.000059 for Rs.33,00,000/-, and bearing No.000060 for Rs.30,00,000/- dated 25.07.2018 and 02.08.2018 (last 2 cheques) respectively drawn on HDFC Bank,

Bangalore. The said cheques with same number are noted in Ex.P.9 and P.10 respectively. As per Ex.P.9, the cheque is issued by sum of Rs.45,00,000/- and has been issued by accused as full and final settlement to the complainant i.e., as sale consideration with respect to the plot Number 214. But is dated 28.10.2015. As per Ex.P.10, the sale consideration is Rs.45,00,000/- and the said amount has been paid through cheque bearing No.000058 drawn on HDFC Bank with respect to the plot number 414. But the same is dated 19.10.2015. On comparison of the same can be noted that the entire sale consideration has been paid by the accused to the complainant through the said cheques. But there is difference in dates on the said cheques, i.e., sale deed, which are with respect to the 2015, whereas the cheques are pertaining to the year 2018. Therefore some doubt is created regarding the defence of the accused. But at this stage, the counsel for the accused points to the future facts of the complaint at para No.5, that commences as “after execution of sale deed, in spite of issuance of cheque

leaf as mentioned in the respective sale deed, the accused requested to do interior decoration to the flat sale and thus the complainant has also carried an interim decoration as stated by the accused and therefore after calculating sale consideration and cost incurred for interior decoration, the accused issued cheque in favour of the complainant which are issued in the year 2018, totally amounting to Rs.1,26,00,000/-. This version of the complainant somewhere creates doubt to this court.

10. When document is duly registered presumption raises under section 170 of the Indian Registration Act, that it is duly executed. Therefore it appears that the sale consideration as noted in the sale deeds have been completely paid. Further the accused at this stage points out to the fact that the complainant has lodged complaint before Banasawadi police station against the accused regarding selling of the property by the accused. Also has produced the copy of sale deed which the accused has sold the said plots in favour of one Sri.Raghu.H.R as of in the

year 22.07.2016 and same are registered copies and at this stage, the presumption raises that the same has been duly executed. Therefore by comparison of these documents, it is clear that when property has been sold in favour of the accused, in turn has sold the said property in the year 2016 itself to one Sri.Raghu, question of accused getting interior done by the complainant creates some doubt in the case of the complainant. The complainant himself appears to have admitted regarding sale of the property to some other person by lodging complaint in police station. The counsel for the complainant argues that the accused has paid part of the amount but is in due for further amount. Therefore as per registered sale deed, marked before this court by the complainant, the said cheques were dated 2015, but alleged cheques which are dishonored are pertaining to the year 2018. Therefore all these facts as placed by the complainant itself creates doubt and verocity on the case of the complainant. Therefore in this situation there is heavy burden upon the complainant to prove the alleged facts for

which a complete trial is required. The counsel for the complainant argues that if the accused is acquitted, the complainant will repay the said amount to the accused as contemplated under said section. The earlier authorities of Hon'ble Appellate court were pointing out that the said section is mandatory in nature. If the accused does not admits the guilt. The recent authorities of the Hon'ble Appellate court on which the counsel for accused has relied are

1)M/s JSB Cargo and Freight Vs State and another on 20.12.2021 Delhi High court.

2) Cr.M.C.No.2663/2021 C/w Cr.M.C.NO.2730/2021

In the said authorities, the Hon'ble Delhi High court has held that section 143A of N.I.Act is directory in nature and not mandatory and held that the facts and circumstances of the case is to be seen before adjudicating any of the matter. In this instant case, clear doubt is created with the case of the complainant. Therefore unless there is full fledged trial, this court cannot come to the conclusion that the accused had

issued the said cheques for a legally recoverable debt. Accordingly when said section is not mandatory in nature, this court is to consider the facts and circumstances and thus comes to the conclusion that there are no sufficient grounds made out by the complainant in order to direct the accused to deposit 20% of the cheque amount before this court. Accordingly on the above point is answered in negative.

11. Point No.2: In view of the above discussion, I proceed to pass the following:

ORDER

The application filed by the complainant under section 143A of N.I.Act is herewith dismissed.

[Dictated to the stenographer, computerized by him and then corrected and pronounced by me in the open court on this the 4th day of March 2023.]

**Vth Addl. Judge & 24th ACMM
SCCH-20, Mayohall Unit, Bangalore**

04.03.2023

(Order pronounced in open court,
vide separate Order)

ORDER

The application filed by the complainant
under section 143A of N.I.Act is herewith
dismissed.

V ASCJ & IV ACMM

1)

Advocate - M.ALLAH BAKASH

2)

Advocate-M.ALLAH BAKASH