

Rashmi Vs. Ahuja
IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
20TH COURT, MAZGAON, MUMBAI

C.C. No.3213/SC/2022

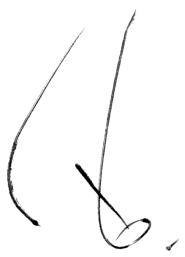
ORDER BELOW EXH. 111

This is an application put forth on behalf of accused no.2 with the prayer to issue notice to Official Assignee to made him a formal appearance and to take note of the proceeding and file say. Reply is filed by the complainant at Exh.112.

2 Perused application as well as say. Heard both the learned advocates for respective parties.

3 It is the contention in the application that the accused has been declared insolvent by the Hon'ble the High Court, Bombay in Insolvency proceeding which is in the knowledge of the complainant. The accused firm and its partners have been declared insolvent on 24.06.2022. Official Assignee has been appointed taking the charge of the assets of accused no.1 Partnership firm and other accused. The accused has no control over the bank account. If the accused is convicted and directed to pay fine or compensation, he will not able to pay the same. Hence, prayed to allow the application.

4 The sum and substance of say states that the application is misconceive and frivolous. The complaint is filed against the accused of the offence punishable under section 138 of the Negotiable Instruments Act. The appointment of Official Assignee and declaration of accused as insolvent is irrelevant in the present proceeding. The liability of the accused is personal. Official Assignee cannot be compelled to defend the



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accused in criminal proceeding. Filing this application is attempt to cause delay. Hence, prayed to reject the application.

5 It is an admitted fact that the present proceeding is filed by the complainant alleging the commission of the offence punishable under section 138 of the Negotiable Instruments Act. Thus, this is not proceeding of civil nature. Similarly, this is not the proceeding to recover the amount. Needless to mention that the criminal prosecution cannot be defended by the Official Assignee for accused. The presence of Official Assignee is not required in criminal proceeding. The Official Assignee is connected only with the assets of the insolvent and nothing more than that. It is a personal liability of the accused. The question remains about the contention of the accused that if he is convicted and thereby directed to pay compensation or fine, he will not be able to pay the same. However, for that purpose, law has provided the provision if fine or compensation is not paid. Therefore, that cannot be the reason to issue notice to Official Assignee calling him to file say or take note of the present proceeding.

6 Considering the above reasons, certainly no need to allow the application as the proceeding is not of civil nature. The accused has to face the trial in person. Hence, following order.

ORDER

The application is rejected.

(Paresh. V. Kulkarni)

Judicial Magistrate First Class

Date : 30.03.2026