

Santosh Vs. Kalpana
IN THE COURT OF THE JUDICIAL MAGISTRATE FIRST CLASS
20TH COURT, MAZGAON, MUMBAI

C.C. No. 1404/SC/2021

COMMON ORDER BELOW EXHS. 18, 11, 48
DATED 15.07.2022, 18.06.2022, 23.11.2024

Read, Perused the record.

2 Learned advocates representing the complainant and the accused have submitted that the case is listed for orders on the applications under section 143 (A) of the Negotiable Instruments Act.

The points for determination alongwith my findings are as under....

Sr. No.	Points	Findings
1	Is the complaint prima facie indicates necessity to award interim compensation ?	As per final order
2	What order ?	As per final order

REASONS

AS TO POINT NOS. 1 AND 2 :-

3 The accused has pleaded not guilty vide Exh.10 on 18.06.2022. Where-after, the complainant has been subjected to cross examination on 02.11.2022. The statement under section 313 of the Code of Criminal Procedure (Code) has been recorded vide Exh.20 on 01.12.2022. Wherein, the accused has contended that she is willing to adduce defence evidence. Subsequently, she has sought permission to cross examine the complainant with reference to the documents at Exhs.27/3 to 27/5. Said permission has been granted and accordingly the complainant



...2...

has been further subjected to cross examination on 17.04.2023. The complainant has also moved an application vide Exh.30 on 19.05.2023 seeking his recall with reference to certain material facts which have been brought on record. The accused on the other hand, has also moved an application Exh.34 seeking recall of the complainant for cross-examination with reference to certain aspects which have been elicited in the documentary evidence. Eventually, said applications have been ordered on 15.12.2023 and the complainant has been recalled with liberty to the accused to cross examine him with reference to re-examination, if any.

4 At this stage, present applications Exhs.11, 18 have been pressed on behalf of the complainant. The accused has opposed the claim with contentions that since the case is listed at part heard stage, present applications are not sustainable. In support, she has relied upon the case law **Noor Mohd. Vs. Khurram Pasha**, AIR 2022 SC 3592. On facts, the case law can be distinguished. Wherein, the issue was with regard to right to cross examine and to have logical conclusion of the proceedings.

5 As noted earlier, the trial has progressed substantially. And, if the complainant and the accused participate and co-operate for effective hearing of the case, there is likelihood of its conclusion at the earliest. That apart, "counter allegations" which have been brought on record, would point out that, there is debatable questions with regard to the transaction in question. Hence, now at this stage, prima facie entitlement of the complainant to have interim compensation cannot be assessed. Hence,



...3...

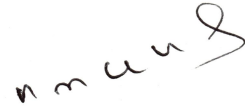
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these applications are not sustainable for want of further compliance as ordered below Exhs.30, 34 and consequently, those are required to be placed for hearing at the most. Accordingly, following order is passed.

ORDER

1 The applications be kept for hearing after the compliance of order passed below Exhs.30, 34 on 15.12.2023 on part of the complainant and the accused.

2 Both sides to note accordingly.



Date : 06.01.2025

(V.B. Gulve-Patil)
Judicial Magistrate First Class
20th Court, Mazgaon, Mumbai.