

Order below Exh. 22 in C.C. No.7105/SS/2021

This is an application filed by the complainant under section 143-A of the Negotiable Instruments Act, 1881 (In short 'N.I. Act') for interim compensation.

2. The complainant contended that, in view of Section 143-A of N.I. Act the interim compensation can be paid to the complainant within sixty days from the order and further period upto 30 days. The complainant is entitled for interim compensation of 20% of disputed cheque amount from the accused. Hence, the complainant has filed the present application and prayed for allow of the application.

3. The accused has resisted the application by filing say overleaf of Exh.22 and denied the application. The accused contended that, the transaction shown by the complainant is false and fabricated. Such transaction never took place. The complainant has never delivered any goods to the accused. He has not issued any notice to the accused in respect of dishonor of the disputed cheque. The accused is not liable to pay cheque amount or any amount to the complainant. The accused does not have any concern with the present case and disputed cheque. Hence, accused prayed for rejection of the application.

4. I have heard the learned advocates for the complainant and accused. The learned advocate for the complainant submitted that in view of Section 143-A of N.I. Act, the complainant is entitled for interim compensation of 20% of the disputed cheque amount. The accused is liable to pay interim compensation amount to the complainant. Hence, he prayed for allow of the application.

5. On the contrary, learned advocate for the accused submitted that the complainant has shown false and fabricated transaction. No such

transaction took place between the complainant and accused. The accused does not have any concern with present case. The accused is not liable to pay any amount to the complainant. Hence, he prayed for rejection of the application.

6. On perusal of proceeding, it is seen that, considering prima facie case process is issued against accused no. 2 who is proprietor of M/s. Sanjana Trading. Therefore, it appears that prima facie case is in favour of the complainant against the accused.

7. According to the complainant, he has supplied material to the accused and accused issued disputed cheque against said liability which are returned dishonored.

8. It is seen that disputed cheques are drawn on account of the accused and they are belonging to the accused. Therefore, presumption u/s. 139 of N.I. Act is in favour of the complainant. Rebuttal of presumption is part of the trial. However, at this stage, prima facie case of the complainant is supported by the presumption u/s. 139 of N.I. Act.

9. In view of law laid down by **Hon'ble Bombay High Court** in case of **Mr. Ashwin Ashokrao Karokar vs Mr. Laxmikant Govind Joshi Decided on 07/07/2022** the provision under section 143-A of the N.I. Act is not mandatory and it is discretionary. It also laid down that, 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.

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10. The complainant has made out prima facie case and factors leading to presumption under section 139 of the N.I. Act as laid down in the case of **Mr. Ashwin(supra)**. The requirements of section 138(a)(b)(c) of the N.I. Act are fulfilled.

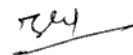
11. Therefore, considering prima facie case, presumption under section 139 of the N.I. Act in favour of the complainant, span of pendency of the present complaint and it will take time for adjudication of the trial on the merits after evidence of both parties, it is necessary to award interim compensation to the complainant.

12. So far as quantum of interim compensation amount is concerned, considering span of the pendency of the present complaint and the disputed cheque amount 10% of the disputed cheques amount will be substantial, proportionate and proper amount as interim compensation during pendency of the proceeding and it would meet the ends of justice.

13. Thus, for the reasons aforesaid, the complainant is entitled for interim compensation @10% of the disputed cheques amount from accused. Accordingly, I proceed to pass following order :-

ORDER

1. Application is partly allowed.
2. Accused shall pay 10% amount of the disputed cheques amount to the complainant by way of interim compensation within 60 days from today.
3. Dictated and pronounced in open court.



(A.S. Tekale)

Metropolitan Magistrate
14th Court, Girgaon, Mumbai.

Date : 15.03.2024

KCK