Order Below Exh. 10 in Case No. 696/SS/2021

1. This is an application made by the complainant under section 143A of the Negotiable Instruments Act (for short '***the N.I.Act***') with a prayer to direct the accused to pay interim compensation to the extent of 20% of the cheque amount.

2. The complainant has contended that, the present complaint pertains to a cheque issued towards part payment of outstanding loan amount. The accused has appeared and pleaded not guilty. Therefore, the accused is required to be directed to pay interim compensation in accordance with Section 143A of the N.I. Act to the extent of 20% of the cheque amount.

3. The accused has filed his reply at Exh. 13. The accused has raised several objections in his reply. The sum and substance thereof is to the effect that, the subject cheque was stolen from the office of accused by the collection agent Mr. Anand Gupta at the instance of the complainant. The accused has made a complaint in that regard with the Dharavi Police Station on 29.07.2021. The complainant has manipulated the loan account. The subject cheque has been misused. On these major grounds, the accused has prayed for rejecting the application.

4. Heard learned Advocates for both the sides. Perused record. In support of his submissions, the learned Advocate for the accused has relied on the following decision;

- *Dharmpal and Anr. V/s. Om Parkash 2022 (2) RCR (Criminal) 621.*

5. The case is for offence punishable under section 138 of the N.I. Act. The accused has pleaded not guilty to the accusation made in complaint. In view of the provisions of Section 143A of the N.I. Act, this Court has power to direct the accused to pay interim compensation to the complainant. Recently, in the case of ***Mr. Ashwin Ashokrao Karokar V/s. Mr. Laxmikant Govind Joshi in Criminal Writ Petition No. 48/2022 decided on 07.07.2022, our Hon'ble High Court, Bench at Nagpur*** has held that, the provisions under section 143A of the N.I. Act are directory in nature and not mandatory.

6. In view of order dated 01.11.2022, the accused has produced photocopies of complaint dated 29.07.2021 and order dated 13.08.2021 passed by the Assistant Registrar Co-Operative Societies, E-Division, Mumbai in Application No. 10/2020. The complaint made to the Dharavi Police Station is after the date of dishonour of subject cheque. The application bearing No. 10/2020 was rejected by the Assistant Registrar Co-Operative Societies by observing that, there are complicated issues between the parties and limited scope for enquiry under section 101 of the Maharashtra Co-Operative Societies Act. On the contrary, the Assistant Registrar Co-Operative Societies has observed that, the accused had availed the loan.

7. The accused has raised several contentions in his reply. However, the said contentions would be a matter of

evidence and final adjudication which would require a full fledged trial. The said contentions would be a good defence to the accused. However, at this stage, the said contentions cannot accepted as gospel truth for rejecting the application. It is significant to note that, indisputably, the accused has not replied the statutory notice. He has not disputed the fact of availment of loan. It is also not his contention that, he has paid the cheque amount after receipt of the statutory notice. Therefore, the application cannot be rejected merely on the basis of general objections raised by the accused in his reply.

8. I have carefully gone through the decision in the case of ***Dharmpal (Supra)***. In the said case, the order of granting interim compensation was quashed and set aside as there was no reasoning supporting said order. The requisite parameters were neither pleaded nor existing. However, that is not the position in the case at hand. In the present application, it is mentioned that, the complaint pertains to a cheque issued towards part payment of outstanding loan amount. Therefore, the said decision cannot be made squarely applicable to the case at hand owing to non-identical facts and circumstances.

9. The complainant has filed evidence affidavit and the matter is for cross examination. The complainant is a **Co-operative Society**. The transaction mentioned in the complaint is a loan transaction. The documents produced along-with the evidence affidavit *prima-facie* support the case of the complainant. Having regard to the **business** of the complainant

and the object behind inserting section 143A of the N.I.Act, the application deserves to be allowed. The cheque in question is of an amount of ₹2,50,000/-. The amount of interim compensation would be ₹50,000/-. Hence, Order.

ORDER

1. Application Exh. 10 is allowed in the following terms.
2. The accused shall pay ₹50,000/- (Rupees Fifty Thousand) to the complainant as interim compensation within 60 days from the date of this Order.

Sd/-
(**Mahesh V. Phade**)
Metropolitan Magistrate
7th Court, Dadar, Mumbai

Mumbai
Date : 09.03.2023