

**IN THE COURT OF METROPOLITAN MAGISTRATE
44TH COURT, ANDHERI, MUMBAI.**

C.C.No.63/SS/2020

Mr. Sanjay Harichand Mutrreja, Complainant

Vs.

Orbit Ventures Developers and Ors., Accused

**ORDER ON APPLICATION FILED BY COMPLAINANT UNDER
SECTION 143 (A) OF N.I. ACT FOR INTERIM COMPENSATION
(Passed on 15/02/2024)**

1. The complainant filed this application under section 143(A) of the Negotiable Instruments (Amendment) Act 2018 and thereby sought the interim compensation @ 20% of the cheque amount on the ground that the accused persons appeared and they pleaded not guilty.
2. Per contra, the accused persons filed the say and resisted the claim on the ground that the application filed by the complainant is absolutely false, frivolous, vexatious and there is no liability against him. Hence, the accused persons prayed to reject the application.
3. Having perused the record, I heard the learned advocates for both the sides. Following points are formulated for my determination.

<u>SR. NO.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1]	Whether the complainant is entitled for interim compensation during the pendency of the trial?	Affirmative
2]	What order?	The application is allowed as per final order.

REASONS

4. At the outside, it is pertinent to note that this is a criminal complaint filed under Section 138 r/w. 141 of the Negotiable Instruments Act. This is a summons case. It was filed on 07/01/2020. In pursuance of the process issued under Section 204 of Cr. P.C., the accused persons appeared before the Court. The accused persons did not plead guilty and claimed further trial.

5. Section 143 (A) of the Negotiable Instruments Act empowers the Court to order the drawer of the cheque to the interim compensation to the complainant if the drawer pleads not guilty to the allegations made in the complaint which is a summary trial or summons case. It is settled that the compensation amount shall not exceed 20% of the amount of the cheque in dispute.

6. In the present case on hand, the complainant alleged that the cheque issued by the accused to discharge the legal liability were dishonoured and therefore, it had no option to initiate the legal action against the accused by filing the complaint under Section 138 of the Negotiable Instruments Act. According to the complainant, it not only suffered monetary loss but also sustained mental agony due to the illegal acts committed by the accused persons. Hence, the complainant company has been constrained to file this interlocutory application alongwith the petition under Section 138 of the Negotiable Instruments Act.

7. On the other hand, the accused denied the transaction mentioned in the complaint and submitted that the case is false. Thus, it prima facie appears that there is a debatable issue which needs to be tried. In fact, the trial will take its own time. It appears that the accused evaded service of summons for long time. So also while giving the reply to this application, the accused have nowhere specifically

denied the signature made on the cheque in dispute.

8. It appears that the case is pending since last 3 years and the accused did not make positive attempts to settle the matter after his appearance before the Court. Thus, there is sufficient material placed on record to proceed further with this matter. In such circumstances, having regard to the settled provisions of Section 143 (A) of the Negotiable Instruments Act, the complainant is entitled to have the interim compensation. In this regard, I am guided by the ratio laid down by the Hon'ble Delhi High Court in the case of **M/s.J.C.B. Cargo and Fright Forwarder Pvt. Ltd., V/s. State and Ors., (Crl.M.C.2663/2021)** wherein it is held that *Section 143 (A) of the Negotiable Instruments Act is a directory provision rather than the mandatory one.*

9. In the case of **Surinder Singh Deswal @ Colonel SS Deswal and Ors V/s. Virender Gandhi (Criminal Appeal No.917944 of 2019 (Arising out of Slp(Criminal)No.49484975/2019)**, the Hon'ble Supreme Court of India held that the accused is liable to deposit the interim compensation under Section 143 (A) of the Negotiable Instruments Act of cheque amount before the Court in favour of complainant.

10. In view of the discussion noted above, I have come to the conclusion that the complainant has satisfied the ingredients as contemplated under Section 143 (A) of the Negotiable Instruments Act. Resultantly, I record my finding in affirmative for Point No.1 and proceed to pass the following order:

ORDER

- i) The application filed under section 143(A) of the Negotiable Instruments (Amendment) Act 2018 is

hereby allowed.

- ii) The accused No.1 to 4 are directed to pay/deposit the 20% compensation to the complainant towards interim compensation under section 143(A) of the Negotiable Instruments (Amendment) Act 2018 within 60 days from the date of passing this order.
- iii) The complainant company shall furnish undertaking that in case of acquittal of the accused, it shall return the interim compensation within 60 days with the prevailing bank rate interest to the accused.
- iv) The learned advocates for both the sides shall take note of this order and shall expedite the trial.

Date : 15.02.2024

Sd/-
(Sujitkumar C. Tayde)
Metropolitan Magistrate,
44th Court, Andheri, Mumbai.