

**IN THE COURT OF JUDICIAL MAGISTRATE FIRST CLASS,
44TH COURT, ANDHERI, MUMBAI.**

C.C.No.64/SS/2020

Sanjay Harichand Muttreja

.... Complainant

V/s.

M/s. Orbit Ventures Developers and Ors.,

.... Accused

ORDER ON EXH.NO.08

By way of this application, the complainant who filed the complaint under section 138 of the Negotiable Instruments Act, has prayed to pass an order under section 421 of the Code of Criminal Procedure against the accused on account of his failure to comply the order passed by this Court under section 143 (A) of the Negotiable Instruments Act.

2. According to the complainant, this Court allowed the application filed by the complainant under Section 143 (A) of the Negotiable Instruments Act on 15/02/2024 and thereby directed the accused to pay/deposit 20% of the cheque amount as the compensation within 60 days from the date of the order. The complainant further alleges that in spite of having the knowledge about the said order, the accused deliberately avoided to obey it.

3. It is further pleaded that the complainant is in need of money. But the accused intentionally and willfully committed default by disobeying the directions given by this Court in the said order dt.15/02/2024. Thus, in short, according to the complainant, the accused fails to pay the amount of interim compensation within the stipulated period and, therefore, the immovable property belonging to the accused Firm needs to be attached. The complainant has given the details about the said property.

4. The learned advocate for the accused resisted the application by way of filing the reply and has taken a stand that instead of adducing the

evidence, the complainant filed this application to delay the trial deliberately. It is the stand of the accused that the order passed under section 143 (A) of the Negotiable Instruments Act has been challenged before the Hon'ble Sessions Court and therefore, this application cannot be allowed. The another stand taken by the accused is that the property which is proposed to be attached is handed over to the society and the remaining portion of the land has already been mortgaged with the financial institute and therefore, such property cannot be attached.

5. Having heard the learned advocates for both the parties, I perused the record. Following points are formulated for my determination:-

<u>Sr. No.</u>	<u>POINTS</u>	<u>FINDINGS</u>
1	Whether the complainant is entitled to initiate the proceeding for attachment of the property belonging to the accused due to disobedience of the order passed under section 143 (A) of the Negotiable Instruments Act?	In negative
2	What order?	The application is rejected.

REASONS

AS TO POINT NO.1.

6. At the outset, it is pertinent to note here that the learned predecessor of this Court passed the order under section 143 (A) (1) of the Negotiable Instruments Act and thereby ordered that 20% of the cheque amount be made over by the accused to the complainant as interim compensation. But the record shows that the accused failed to comply the said order.

7. Having gone through the record, it appears that the property which is proposed to be attached is in possession of the society and some of the part of the said property was mortgaged. In such circumstances, unless

and until the said society and the mortgagor are given a chance of being heard, it will not be justified to pass the order for attachment of the said property. Apart from this, the interim compensation order passed by this court on 15/02/2024 has already been challenged before the competent Court and the matter is subjudice. In such circumstances, the Court should be slow while proceeding further in this matter. In short, the property which is proposed to be attached is not free from any encumbrances and it is already charged. Therefore, unless and until all these points regarding the mortgage and the possession thereof are resolved, it will not be justified to proceed further. Hence, having regard to the facts and circumstances of the case, I pass the following order:

ORDER

The application is rejected.

Sd/-

(**Sujitkumar C. Tayde**)
Judicial Magistrate First Class,
44th Court, Andheri, Mumbai.

Date : 16.08.2024