

S.C.C. No. 5439/2020
Viduryam Chits Pvt. Ltd. ..Vrs..Mr. Yogesh Reddy
CNR No. MH-PU-09-006947-2020

ORDER BELOW EXH. 26
Delivered on 18th Day of July, 2024

The complainant moved this application under Section 143-A of the Negotiable Instruments (Amendment) Act, 2018 (for short "The N.I. Act") praying therein direction against the accused to pay interim compensation of Rs. 3,25,920/- being the 20% of the cheque amount of total amount of Rs. 16,29,600/- to him during pendency of the trial. He contended that as per amended provision, the accused is liable to pay interim compensation as above, within a maximum period of 60 days. He contended that the accused not pleaded guilty on 28/10/2021 and preferred trial. Hence, he prayed to allow the application.

2] The accused opposed this application vide his say below Exh. 24 itself. He contended that the accused never issued the cheque for legally enforceable debt and liabilities. Hence, he prayed to reject the application.

3] Heard both sides. Perused the record of the case.

4] It is required to note that this is an application which requires adjudication before the commencement of the trial i.e. prior to the stage when the complainant is present in the dock to led his evidence. Hence, at this stage, this Court is not required to go into the merits of the case, as like to decide, whether there is a legal enforceable debt or not. Hence, this application is required to be decided on prima facie proof. Record shows that the accused failed to file his reply to the demand notice even before the recording of his plea. The operation of Sec-

tion 143-A of the NI Act is prospective in nature and this case is filed after commencement of amendment. Hence, this application is maintainable.

5] To establish prima facie case, the complainant has filed relied on the copies of cheque, cheque return memo and other documents. He also invited the attention of the Court to the plea of the accused. Record shows that the accused failed to reply to the demand notice of the complainant within statutory period of limitation. Record shows that the cheque issued by the accused came to be dishonoured for the reason "Payment stopped by Drawer" and not for any other reason. No reply to the legal notice is given by the accused. Plea of accused is recorded on 28/10/2021. Since 28/10/2021, the case is pending for evidence.

6] *The Hon'ble Bombay High Court Bench at Nagpur in the case of Cri. Writ No. 83/2023 Guljama Shaha Jahir Shaha Vrs. Shri. Sadguru Kaka Stone Crusher, decided on 21/09/2023* has held that while deciding an application under Section 143-A of the NI Act the magistrate not required to give reasons for awarding compensation to the complainant. As discussed, the accused has not disputed the factum of issuance of cheque and his signature on it. At the same time it is settled that if the accused succeeds in his defence the said amount will get back to him. Whether the present cheque is issued towards security or not is a question that required adjudication on merit. Therefore, at this stage this court is not inclined to rely on the submissions canvased by the learned advocate for the accused. This Court held that the complainant has made out a prima facie case to order against the accused pay interim compensation to him during pendency of the trial.

7] A reading of Section 143-A shows that the interim compensation must not exceed 20% of the amount of the cheque. Hence, upper cap of 20% is set by the Section itself and the Court cannot go beyond the upper cap. But, the Court may take into consideration the other factors for deciding the percentage of interim compensation to the complainant by the accused. Hence, in the facts and circumstances of the case, as the cheque and amount and signature is not disputed by the accused, so also he failed to file his reply to the demand notice after the statutory period of limitation is concerned, it would be appropriate to direct the accused to pay 10% of the cheque amount to the complainant.

8] In view of above discussion, this application deserves to be partly allowed. In the result, following order is passed.

ORDER

1. Application below Exh. 26 is partly allowed.
2. Accused is ordered to pay 10% amount of cheque i.e. Rs. 1,62,960/- as interim compensation to the complainant within 60 days from the date of this order.
3. The complainant shall file an undertaking to the effect that he shall deposit the amount of interim compensation that will be received by him along with interest at the rate of 6% per annum there upon, if the accused is acquitted.

Date : 18/07/2024

(AL Amoodi A. K.)
Judicial Magistrate First Class,
Pimpri, Pune.

CERTIFICATE

“ I affirm that the contents of this P. D.F file Judgment / Order are same word for word as per original Judgment.

Name of Steno : Smt. K. U. Pawar

Court Name : Shri. AL Amoodi A. K.
Judicial Magistrate
First Class, Pimpri, Pune.

Date :18/07/2024

Judgment /Order Signed by
Presiding Offier : 18/07/2024

Judgment/Order uploaded on : 18/07/2024