

S.C.C. No. 5843/2021
Hira Ravi Bhandare
.....Vrs.....
Ganesh Bankar
CNR No. MH-PU-09008240-2021

ORDER BELOW EXH. 28
PASSED ON Dt. 16.02.2023

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 **Rs. 3,44,776/-** interim compensation of the 20% of the four cheques amount of Rs. 17,23,880/- to to him during pendency of the trial. She contended that as per amended provision, the accused is liable to pay interim compensation as above, within a maximum period of 60 days. She contended that this court after verifying the documents issued process against the accused on 12.10.2021. In spite of service of summons the accused remained absent. Hence, bailable warrant was issued against the accused. Consequently there upon the accused appeared and not pleaded guilty on **13.04.2022** and preferred trial. She contended that the accused has admitted his liability and in pursuance of he issued several cheques to the complainant towards part payment, discharge his liability. However, all cheques are dishonoured. Hence, he prayed to allow the application.

2] The accused opposed this application vide his say below Exh. 32. He contended that he had never accepted any liability as contended by the complainant. He contended that the complainant be directed to proof the allegations on evidence. There is no prima facie case to the complainant. Hence, he prayed to reject the application.

In support of his submission he relied on the authority of ***Hon’ble High Court Bench at Nagpur in the case Criminal Write Petition No. 48/2022 Mr. Ashwin Ashokrao Karokar Vrs. Mr.***

Laxmikant Joshi and others decided on 07.07.2022. He submitted that in the above cited authority the Hon'ble Bombay High Court has held that the Magistrate has to record reasons for determining the quantum of interim compensation, if it comes to the conclusion based upon the fact, position availing, that it is a case which deserves award of interim compensation which can be anywhere upto 20% of the cheque amount. Lastly, he prayed to reject the application.

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

5] 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 like to decide whether this 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 Section 143-A of the NI Act is prospective in nature and this case is filed after commencement of amendment, hence, the accused is liable to pay interim compensation to him.

6] To establish prima facie case, the complainant has filed relied on the copies of cheques, cheques 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 cheques issued by the accused came to be dishonoured for the reason "Funds insufficient" and not for any other reason. No reply to the legal notice is given by the accused. Plea of accused is recorded on 13.04.2022. Since 13.04.2022, the case is pending for evidence. It will take time to decide the case on merit. Hence, on the basis of documents placed on record and in the facts

and circumstances of the case, 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 cheques. 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 cheques 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 20% of the cheque amount to the complainant.

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

ORDER

1. Applications below Exh. 28 is allowed.
2. Accused is ordered to pay 20% amount of cheques i.e. Rs. **3,44,776/-** as interim compensation to the complainant within 60 days from the date of this order.

Date : 16.02.2023

(R. M. Giri)
Judicial Magistrate First Class,
Pimpri, Pune.

C E R T I F I C A T E

“ 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. R. M. Giri
Judicial Magistrate
First Class, Pimpri, Pune.

Date : 16.02.2023

Judgment/Order signed by
presiding officer on : 17.02.2023

Judgment/Order uploaded on : 17.02.2023