

S.C.C. No. 6649/2021
M/s. Parvati Nagari Sah. Pat. Maryadit
..Vrs..Leelabai Umesh Chavan
CNR No. MH-PU09-010146-2021

ORDER BELOW EXH. 24
PASSED ON Dt. 15.04.2023

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 interim compensation of **Rs. 11,831/-** being the 20% of the cheque amount of total amount of Rs. 59,159/- 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 22.11.2022 and preferred trial. Hence, he prayed to allow the application.

2] The accused opposed this application vide his say below Exh. 24 itself. The application is not maintainable. The provision to direct interim compensation by the accused to the complainant is discretionary. The accused has paid earlier installments of loan amount with the complainant. Lastly, 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 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.

5] To establish prima facie case, the complainant has filed relied on the copies of cheque, cheque return memos 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 “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 22.11.2022. Since 22.11.2022, the case is pending for evidence. The complainant has filed his affidavit examination-in-chief on 08.02.2023. It is the defence of the accused that he has paid the loan installments amount to the complainant. However, no documents is filed on record to substantiate his contentions. On the contrary the complainant has filed on record loan paper of the accused to substantiate his contentions. 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.

6] 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 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.

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

ORDER

1. Application below Exh. 24 is partly allowed.
2. Accused is ordered to pay 10% amount of cheque i.e. Rs. 5,916/- as interim compensation to the complainant within 60 days from the date of this order.

Date : 15.04.2023

(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 :15.04.2023

Judgment/Order signed by
presiding officer on : 17.04.2023

Judgment/Order uploaded on : 17.04.2023