

MHPU180005412022



S.C.C. NO. 213/2022

Sanjay Bhoite

Vs.

Abhishek Mantri

ORDER BELOW EXH 14.
(Passed on 02/08/2023)

This is an application filed by the complainant under section 143(A) of Negotiable Instrument Act (hereinafter referred N. I. Act in short) as under.

2. According to the complainant the present complaint filed by him against the accused under section 138 of N. I. Act. The accused with another one person namely Mukesh Laxmikant Lohiya purchased the property of the complainant out of C.S. No. 2608/2 and in pursuance of that, issued cheque of an amount of Rs.5,00,000/- bearing its no. 049834. The said cheque not encashed and bounced. The amount in cheque is legally enforceable amount of the complainant and it is liable to pay by the accused. As the said cheque is bounced the complainant sustain economic loss and mental harassment and therefore filed the present complaint. So, as per the new amendment, the present application filed for obtaining 20% amount of cheque. Hence, this application.

3. The Ld. Advocate for accused filed say at Exh. 15 and thereby submitted that, application is not maintainable and tenable in the eyes of law and liable to be reject. According to him the dispute in between the complainant and the accused is civil in nature. The property out of C.S. No.2608/2 belongs to the father of the complainant. The complainant makes agreement of the said property with the accused with one another person namely Mukesh Lohiya. At

the relevant time the complainant takes responsibility of all legal heirs of his father and thereby agreed to execute the registered sale deed in respect of 144.84 sq. mtr portion out of C.S. No. 2608/2. There also decided that, if there is any loan or other encumbrance arise, the complainant will clarify the same.

4. According to the complainant his sisters have relinquished their share in that property but, the sister of the complainant namely Savita @ Neeta Avinash Rokade issued notice through his Advocate to the complainant, in respect her of 1/5 portion over that property. The copy of said notice is received to the complainant and the accused also. The complainant has not resolved the dispute with his sister and thereby not complied the terms of agreement executed with the accused. Therefore, accused sustain mental harassment and economical loss. Therefore, the application filed by the complainant is illegal and he is not entitled for the same. Hence, he lastly prayed to reject the present application with costs.

5. Perused the application and say. Heard both the Ld. Advocates at considerable length. By this application the complainant sought 20% cheque amount from the accused as per amended provisions of section 143 (A) of N. I. Act. But according to the accused, the dispute in between the complainant and him is in respect of immovable property. Therefore, according to the accused, the present application is not tenable and maintainable in the eyes of law and liable to be reject.

6. Before discussing upon the application filed by the complainant, it is necessary to take into consideration the wording of section 143 (A) of N. I. Act which is as follows.

“143-A. Power to direct interim compensation. - (1) Notwithstanding anything contained in the Criminal Procedure Code, 1973 (2 of 1974), the Court trying an offence under section 138, may order the drawer of the cheque to pay interim compensation to the complainant-
(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
(b) in any other case, upon framing of charge.
(2) The interim compensation under sub-section (1) shall not exceed twenty percent of the amount of the cheque.
(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.
(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.
(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Criminal Procedure Code, 1973 (2 of 1974).
(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Criminal Procedure Code, 1973 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section.”

7. I have carefully gone through the facts of the application and say in the light of wording of new amended provisions under

section 143(A) of N. I. Act. On perusal of the same it appears that, the provisions of Section 143-A of the N.I. Act are directory and not mandatory. The Court 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 up to 20% of the cheque amount.

8. Upon considering this it is crystal clear that, the application for 20% interim compensation filed by the complainant in N. I. Act proceedings can be allowed in the event of reasonable grounds for the same only. Considering the entire facts of the application no any reasonable grounds or reasons appears so as to it has necessary to award 20% cheque amount to the complainant from the accused as a interim compensation. Therefore, in the light of aforesaid discussion no any substance found in the application filed by the complainant. Resultantly, I proceed to pass following order.

ORDER

1. Application stands rejected.
2. No Order as to costs.

Date : 02/08/2023.
Place : Daund

(Sharad B. Kaldate)
Judicial Magistrate First Class
(Court No. 2) Daund.