

BOMBAY HIGH COURT (NAGPUR BENCH)

Before: Justice Avinash G. Gharote

ASHWIN ASHOKRAO KAROKAR – Petitioner,

Versus

LAXMIKANT GOVIND JOSHI – Respondent.

Criminal Writ Petition No. 48/2022

(i) Negotiable Instruments Act, 1881, Section 143-A - Whether the provisions of Section 143-A of the Negotiable Instruments Act, 1881, which empower the Court to direct payment of interim compensation are mandatory or directory ? The provisions of Section 143-A of the N.I. Act are directory and not mandatory. [Para 12]

Held, from a plain reading of Section 143-A of the N.I. Act, it is clear that it is a provision enacted as an interim measure, during the pendency of the trial, when the guilt of the accused is still to be determined. The word ‘may’, thus used in Section 143-A (1) of the N.I. Act, has to be construed in light of the fact that the direction to award compensation, is at the trial stage and as an interim measure. The fact that even in cases under [Section 138](#) of the N.I. Act, the presumption under Section 139 of the N.I. Act, is not absolute, but is rebuttable, also has to be borne in mind. That apart, in a particular case, given the requirement of Section 138 of the N.I. Act, it may so happen that the complaint itself may not be maintainable, for the cheque not having been presented during the period of its validity; the notice not having been issued in the stipulated time; the complaint not having been filed within the time stipulated therefor; the debt may not be a legally enforceable debt or liability; the memo/advice regarding dishonor not having been placed on record etc. These are only some of the instances and do not cover the entire plethora of causes, which may make the complaint itself not maintainable. To direct the grant of interim compensation, in such cases, merely because of the existence of a cheque, by holding that doing so is mandatory, would not be justifiable.[Para 9.2]

Held, Section 143-A of the N.I. Act, though enacted with an intent to ensure speedy disposal of the proceeding pending under Section 138 of the N.I. Act, the said intent, insofar as Section 143-A of the N.I. Act is concerned, does not make the provision mandatory, as what is conferred upon the Court by virtue of the said provision is a discretion to direct interim compensation and no right is created in the complainant under it, to demand the entitlement to compensation. Grant of interim compensation, would be at the discretion of the Court, based upon consideration of various factors, such as (a) whether the requirements of Section 138 of the N.I. Act, were fulfilled (b) whether the pleadings disclose the drawing of the presumption (c) whether the proceedings were within limitation and (d) whether *prima facie* a legal debt or liability was disclosed from the complaint or the notice of demand preceding it, and factors as such. [Para 9.4]

Held, The word 'interim', by its very nature denotes something which is not final, impermanent; temporary; meanwhile; meantime; and would thus govern a situation, which considering the facts prevailing and given the existence of the relevant factors, and the power to award interim compensation, would require the exercise of the discretion by the Court to ensure grant of some relief, if the circumstances so warrant, considering which, again it will have to be held that the power under Section 143-A of the N.I. Act, is discretionary. [Para 9.8]

Held, Though Section 143-A (4) of the N.I. Act provides for repayment of the amount of interim compensation, upon acquittal of the accused, the said provision is in the nature of restitution, as once the complaint is dismissed by the acquittal of the accused or otherwise, for any other reason, the complainant becomes dis-entitled to the interim compensation awarded and thus there has to be a restitution. The provision for restitution as contained in Section 143-A(4) of the N.I. Act, does not add to the plea of the provision being of a mandatory nature. In fact the provision does not specify as to what would be the effect if the restitution is not made by the complainant within the time frame as stipulated therein and is silent as to what steps would have to be taken by the accused in that contingency or what remedy would be available to him, in such a case, so that the amount of interim compensation could be restored back to the accused/s. In this respect, it may need a revisit by the legislature.

Held, The use of the expression 'shall not exceed twenty per cent of the amount of the cheque', as occurring in Section 143-A (2) of the N.I. Act, also does not make the provision mandatory, as the use of the word 'shall' in Section 143-A (2) has to be viewed in the background of the word 'may' as used in Section 143-A (1), which colors the content of the entire provision. The expression "shall not exceed twenty per cent" in Section 143-A (1) merely caps the limit of the discretion which the Special Court is permitted to exercise in the matter and nothing else. The word "shall" as used in the above expression does not transcend beyond the limits of discretion of the Special Court, in the matter of awarding interim compensation, which as already discussed above could be anywhere between 0% to 20% of the cheque amount. [Para 9.14]

(ii) Negotiable Instruments Act, 1881, Section 143-A (2) - Whether the Court has to record reasons for determining the quantum of interim compensation to be awarded as contemplated by Section 143-A (2) of the Negotiable Instruments Act, 1881 ? 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 upto 20% of the cheque amount - The exercise of any discretion conferred upon a Court, must be for reasons to be spelt out, indicating application of mind by the Court to the facts available before it in the application of the law to such facts.

[Para 12]

ORDER

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