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2019 PLRonline 3013 (Mad.)

HIGH COURT OF JUDICATURE AT MADRAS

Before: Mr.Justice N.Anand Venkatesh

L.G.R.ENTERPRISES,

VERSUS

P.ANBAZHAGAN

Crl.O.P.Nos.15438 and 15440 of 2019 and Crl.M.P.Nos.7576 and 7578 of 2019

12.07.2019

Negotiable Instruments Act., 1881, S. 143A – A careful reading of the order passed by the Court below shows that the Court below has focussed more on the issue of the prospective / retrospective operation of the amendment. The Court has not given any reason as to why it is directing the accused persons to pay an interim compensation of 20% to the complainant. As held by this Court, the discretionary power that is vested with the trial Court in ordering for interim compensation must be supported by reasons and unfortunately in this case, it is not supported by reasons. The attempt made by the learned counsel for the respondent to read certain reasons into the order, cannot be done by this Court, since this Court is testing the application of mind of the Court below while passing the impugned order by exercising its discretion and this Court cannot attempt to supplement it with the reasons argued by the learned counsel for the respondent.

ORDER

In both these cases, the common issue that arises for consideration is regarding the scope and purport of Section 143A of the Negotiable Instruments Act. It will be relevant to reproduce Section 143A of the Negotiable Instruments Act, hereunder:

“143A.Power to direct interim compensation (1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the Court http://www.judis.nic.in 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 Code of Criminal Procedure, 1973(2 of 1974).

(6)The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973(2 of 1974),shall be reduced by the amount paid or recovered as interim compensation under this section."

2.Section 143-A of the Negotiable Instruments Act was inserted by Act 20 of 2018 and was brought into effect from 01.09.2018 onwards. It will be relevant to extract the reply given by the Minister of State in the Ministry of Finance, while replying to the parliament, on the debate that took place at the time of introduction of the Bill through which this amendment was brought in.

"THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI SHIV PRATAP SHUKLA) replying to the discussion, said: 15 Members expressed their views on this Bill. Mostly everyone has said that earlier when cheques used ot bounce, then people used to fear. Now this will be reduced. At this time there are about 16 lakh cases of cheque bounce in the subordinate and district courts in the entire country and of these, about 32 thousand cases have gone upto the High Courts. This provision was made also to ensure that such cases do not go upto High Courts. An amendment has been brought in it so that not only the commercial transaction cases, but also the ordinary public benefit from it. People think about the bussinessmen that whatever they do will be correct. Yet, chequest are dishonoured. We will have to think that what should be done about it. By this on the one hand the businessmen will also be benefited as to how cheques can be believed and those people will also be benefited whose cases are related to cheques of small in amounts. Now the Government's cheques will not bounce. The form of Government Cheques is different, which has already been prescribed by the RBI. Many a times the mistakes are clerical and not because of Government's mistakes. I a government the amount of many accounts get transferred from one scheme to the other. This Bill has been brought so that such situations do not emerge. I wish to say that you should definitely pass this Bill."

3.Along with this amendment, Section 148 of the Negotiable Instruments Act was also brought into force which enabled the Appellate Court to insist for the deposit of 20% of the fine or compensation amount, awarded by the Trial Court against the accused person. The scope of this provision came up for consideration before the Hon'ble Supreme Court in

Surinder Singh Deswal @ Col.S.S.Deswal and others Vs. Virender Gandhi in Criminal Appeal Nos.917-944 of 2019. While considering the scope of the amendment, namely the Amendment Act 20 of 2018, the Hon'ble Supreme Court has held as follows:

"7.We have heard the learned counsel for the respective parties at length.

7.1.The short question which is posed for consideration before this Court is, whether the first appellate Court is justified in directing the appellants –

original accused who have been convicted for the offence under Section 138 of the N.I. Act to deposit 25% of the amount of compensation / fine imposed by the learned Trial Court, pending appeals challenging the order of conviction and sentence and while suspending the sentence under Section 389 of the Cr.P.C., considering Section 148 of the N.I.Act as amended?

7.2.While considering the aforesaid issue/question, the statement of Objects and Reasons of the amendment in Section 148 of the N.I.Act, as amended by way of Amendment Act No.20 /2018 and Section 148 of the N.I.Act as amended, are required to be referred to and considered, which read as under:

"The Negotiable Instruments Act, 1881(the Act) was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The said Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of dishonour of cheques. However, the Central Government has been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings. As a result of this, injustice is caused to the payee of a dishonoured cheque who has to spend considerable time and resources in court proceedings to realize the value of the cheque. Such delays compromise the sanctity of cheque transactions.

2.It is proposed to amend the said Act with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation which would save time and money. The proposed amendments will strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

3.It is, therefore, proposed to introduce the Negotiable Instruments (Amendment) Bill, 2017 to provide, inter alia, for the following namely:–

(i)to insert a new section 143A in the said Act to provide that the Court trying an offence under Section 138, may order the drawer of the cheque to pay interim compensation to the complainant, in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and in any other case, upon framing of charge. The interim compensation so payable shall be such sum not exceeding twenty per cent of the

amount of the cheque; and

(ii)to insert a new section 148 in the said Act so as to provide that in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of the fine or compensation awarded by the trial Court.

4.The Bill seeks to achieve the above objectives.

“148.Power to Appellate Court to order payment pending appeal against conviction…

(1)Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), in an appeal by the drawer against conviction under Section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent of theh fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under Section 143A.

(2)The amount referred to in sub-section (1) shall be deposited 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 appellant.

(3)The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, 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.”

8.It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I.Act were lodged / filed before the amedment Act No.20/2018 by which section 148 of the N.I.Act came to be amended and therefore amended Section 148 of the N.I.Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No.20/2018 amending Section 148 of the N.I.Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C., to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I.Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I.Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate Court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in

Section 148 of the N.I.Act.

8.1.Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I.Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I.Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I.Act, is conferred with the power to direct the convicted accused – appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I.Act, it cannot be said that any vested right of appeal of the accused – appellant has been taken away and / or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I.Act shall not be made applicable retrospectively and more particularly with respect to cases/ complaints filed prior to 1.9.2018 shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I.Act, no substantive right of appeal has been taken away and / or affected. Therefore, the decision of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I.Act stated hereinabove, on purposive interpretation of Section 148 of the N.I.Act as amended, we are of the opinion that Section 148 of the N.I.Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I.Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I.Act were filed prior to amendment Act No.20/2018 i.e., prior to 01.09.2018. If such a purposive interpretaion is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I.Act, as amended."

4.The effect of Section 143A of the Negotiable Instruments Act regarding its applicability to the pending cases, need not require a very detailed discussion and this Court can safely adopt the very same reasoning given by the Hon'ble Supreme Court in the above judgment. The amendment through which Section 143A was brough into force will be applicable even into pending proceedings. If such a purposive interpretation is not given to this provision, it will defeat the very purpose of amendment which was brought in as a benefitial piece of legislation for the complainant prosecuting a criminal complaint under Section 138 of the Negotiable Instrument Act.

5.The next question that arises for consideration is the manner in which this provision is to be put into operation in the pending proceedings. It will be relevant to extract Section 143A(1) as follows:

"143A.(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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."

6.A reading of the above provision makes it clear that the Court trying an offence under Section 138 of the Negotiable Instruments Act "may" (emphasis supplied) order the drawer of the cheque to pay interim compensation to the complainant. The provision itself shows that the discretion is vested with the Trial Court to direct interim compensation to be paid by the complainant. It is not necessary that in all cases, the trial Court must necessarily direct the complainant to pay interim compensation and such a direction should be given only on a case to case basis, by taking into consideration the facts of each case.

The legislature has intentionally not used the word "shall", since it would have prevented the accused persons, even in genuine cases, from defending themselves without paying 20% as interim compensation amount to the complainant. This would have directly affected the fundamental right of an accused person to defend himself in a criminal case. This is the reason why the legislature had thoughfully used the word "may" under Section 143A(1) of the Negotiable Instruments Act. Therefore, it is not possible to read the word "shall" into the word "may" which is used in the provision.

7.In view of the above finding, the word "may", gives the discretion to the Trial Court to direct the accused to pay interim compensation to the complainant. The exercise of discretion must always be supported by reasons, failing which the exercise of discretion will become arbitrary.

8.Therefore, whenever the trial Court exercises its jurisdiction under Section 143A(1) of the Act, it shall record reasons as to why it directs the accused person (drawer of the cheque) to pay the interim compensation to the complainant. The reasons may be varied. For instance, the accused person would have absconded for a longtime and thereby would have protracted the proceedings or the accused person would have intentionally evaded service for a long time and only after repeated attempts, appears before the Court, or the enforceable debt or liability in a case, is borne out by overwhelming materials which the accused person could not on the face of it deny or where the accused person accepts the debt or liability partly or where the accused person does not cross examine the witnesses and keeps on dragging with the proceedings by filing one petition after another or the accused person absonds and by virtue of a non-bailable warrant he is secured and brought before the Court after a long time or he files a recall non-bailable warrant petition after a long time and the Court while considering his petition for recalling the non-bailable warrant can invoke Section 143A(1) of the Act. This list is not exhaustive and it is more illustrative as to the various circumstances under which the trial Court will be justified in exercising its jurisdiction under Section 143A(1) of the Act, by directing the accused person to pay the interim compensation of 20% to the complainant.

9.The other reason why the order of the trial Court under Section 143A(1) of the Act, should

contain reasons, is because it will always be subjected to challenge before this Court. This Court while considering the petition will only look for the reasons given by the Court below while passing the order under Section 143A(1) of the Act. An order that is subjected to appeal or revision, should always be supported by reasons. A discretionary order without reasons is, on the face of it, illegal and it will be setaside on that ground alone.

10.Keeping in mind the above discussion on the scope and purport of an order passed under Section 143A(1) of the Act, this Court will now deal with the case on hand.

11.The petitioners in the above petitions are the husband and wife and the respondent/complainant is common in both the cases. The petitioners are said to have drawn a cheque in favour of the respondent towards a legally enforceable debt and the same was dishonoured. It led to the filing of a complaint before the court below for an offence under Section 138 of the Negotiable Instruments Act. Both the cases were at the stage of cross examination of P.W.1. At that point of time, the respondent has proceed to file a petition under Section 143A(1) of the Act, to direct the accused persons to deposit 20% of the cheque amount as interim compensation. The Court below after an elaborate discussion has held that the provision will have a retrospective operation and therefore will apply even to the pending proceedings.

The Court, therefore, proceeded to direct the petitioners to pay interim compensation to the respondent within a stipulated time.

12.The learned counsel for the petitioners submitted that the Court below has not given any reason as to why it has directed the accused persons to pay 20% of the cheque amount to the respondent as interim compensation. The learned counsel submitted that the Court did not properly exercise the discretion since the Court did not give any reasons as to why such a direction is being given against the accused persons.

13.Per contra, the learned counsel for the respondent, apart from bringing to the notice of this Court, the Parliamentary debate that took place while introducing the Bill to amend the Negotiable Instruments Act by inserting Section 143A, also brought to the notice of this Court, the Judgment of the Hon’ble Supreme Court in Surinder Singh Deswal @ Col.S.S.Deswal and others Vs. Virender Gandhi in Criminal Appeal Nos.917-944 of 2019, referred supra.

14.The learned counsel for the respondent submitted that the only point that was argued before the Court below was whether the amendment is prospective or retrospective. Therefore, the Court below has confined its order only to the said argument. The learned counsel submitted that even otherwise in the present case both the accused persons have received the loan amount through RTGS transaction and have issued cheques drawn in favour of the respondent. Both the accused persons did not give any reply inspite of the receipt of the statutory notice issued by the respondent.

15.The learned counsel for the respondent submitted that these factors were taken into consideration by the trial Court while allowing the petition filed by the respondent and had directed the accused persons to pay an interim compensation of 20% of the cheque

amount.

16.The learned counsel therefore, submitted that a beneficial legislation which aims at addressing an undue delay in disposal of complaints under Section 138 of the Act and which discourages frivolous and unnecessary litigation and which enhances the faith in transacting through cheques, cannot be defeated by giving a hyper technical interpretation and therefore, the learned counsel submitted that the Court below was perfectly right in directing the accused persons to pay the interim compensation.

17.This Court has carefully considered the submissions made on either side and the materials available on record. This Court has already derived the scope and purport of Section 143A of the Negotiable Instruments Act, supra. It has to be now applied to the facts of the present case.

18.A careful reading of the order passed by the Court below shows that the Court below has focussed more on the issue of the prospective / retrospective operation of the amendment. The Court has not given any reason as to why it is directing the accused persons to pay an interim compensation of 20% to the complainant. As held by this Court, the discretionary power that is vested with the trial Court in ordering for interim compensation must be supported by reasons and unfortunately in this case, it is not supported by reasons. The attempt made by the learned counsel for the respondent to read certain reasons into the order, cannot be done by this Court, since this Court is testing the application of mind of the Court below while passing the impugned order by exercising its discretion and this Court cannot attempt to supplement it with the reasons argued by the learned counsel for the respondent.

19.This Court took the effort of discussing the effect and purport of Section 143A of the Negotiable Instruments Act, only to ensure that some guidelines are given to the Subordinate Courts, which deals with complaints under Section 138 of the Negotiable Instruments Act, on a regular basis to deal with such petitions effectively and in accordance with law.

20.In view of the above discussion, the order passed by the Court below in Crl.M.P.No.710 of 2019 and Crl.M.P.No.885 of 2019 dated 11.04.2019 is hereby setaside. In the result, the Criminal Original Petitions are allowed. There shall be a direction to the Court below to complete the proceedings in C.C.No.161 of 2018 and C.C.No.142 of 2018, within a period of three months from the date of receipt of a copy of this order. The Registry is directed to circulate a copy of this order to all the Subordinate Courts through the Judicial Academy. Consequently, connected miscellaneous petitions are closed.