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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

WRIT PETITION NO.4122 OF 2022

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Sai Pushpa Enterprises & Ors.

... Petitioners

V/s.

Veerdhaval Sitaram Ghag & Anr.

... Respondents

Mr. Saurabh Butala with Ms. Manvi Sharma i/by Mr.
Harshad Sathe for the petitioners.

Mr. Rohit D. Joshi for respondent no.1.

Mr. A.R. Patil, APP for respondent no.2/State.

CORAM : AMIT BORKAR, J.

DATED : DECEMBER 21, 2022

PC.:

1. The petitioner is an accused in a proceeding under section 138 of the Negotiable Instruments Act, 1881 (hereafter "NI Act", for short). The complainant filed an application under section 143A of the NI Act seeking direction to pay 20% of the amount of cheque. The learned Magistrate by the impugned order dated 10th August 2022 directed the accused to pay 10% of the amount of cheque involved in the complaint.

2. On perusal of the impugned order, it appears that the order has been passed without granting opportunity of hearing to the petitioner. The roznama in support of the said contention also discloses that no opportunity of hearing was granted to the

petitioner. Since the order of direction to pay compensation as per section 143A of the NI Act affects civil rights of the party, opportunity of hearing need to be given to the accused before passing any order on an application under section 143A of the NI Act. Paragraph 2 of the order shows that the Court has passed order recording that the petitioner has failed to file reply affidavit.

3. In that view of the matter, following order is passed:

- a) The impugned order dated 10th August 2022 passed by the learned 4th Judicial Magistrate First Class, Thane below Exhibit 23 in SCC No.2863 of 2020 is quashed and set aside;
- b) The proceedings are remanded back to the learned Magistrate for deciding the application below Exhibit 23 afresh;
- c) Parties shall appear before the learned Magistrate on 6th January 2023;
- d) The learned Magistrate shall thereafter decide the application below Exhibit 23 within three (3) weeks thereafter, after granting opportunity of hearing to both sides.

4. The writ petition is disposed of in above terms. No costs.

(AMIT BORKAR, J.)