

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

CRIMINAL APPLICATION NO. 1353 OF 2022

Rambhia Pravin Damji HUF and anr. ... Applicants
v/s.
Mr. Suneel Dattatraya Mogre and anr. Respondents

Mr. Niranjan Mundargi i/b. Kunal Ambulkar for the Applicants.
Mr. Dev Galani for the Respondent No.1.
Mr. Arfan Sait, APP for the State.

CORAM: R.G. AVACHAT, J.

DATED : 01st MARCH, 2023.

P. C. :-

. Heard.

2. The challenge in this Application is to the order dated 10/10/2022 passed by the Metropolitan Magistrate, 56th Court, Mazgaon on an Application at Exhibit-11 moved under section 143-A of the Negotiable Instruments Act, 1881 (for short 'NI Act'). Vide order impugned herein, the Applicant/accused has been directed to pay/deposit 20% of the cheque amount i.e., Rs.27,48,850/-.

3. Perused the promissory note dated 01/04/2021 executed by the Applicant herein in favour of the Respondent-complainant. Under the Demand Promissory Note, the Applicants promised to pay

Rs.96,06,167/- together with interest @ 12% per annum. The Applicant issued the cheque dated 31/03/2022 for a sum of Rs.1,37,44,250/- towards repayment of the amount covered by the promissory note.

4. Perused the complaint filed by the Respondent/complainant. Calculation of the component of interest @ 12% per annum on the sum of Rs.96,06,167/- to the date of issuance of cheque i.e., 31st March, 2022 suggest that the amount covered by the cheque exceeds what is actually due from the Applicants. As such, a sum of Rs.1,37,44,250/- was not interest @ 12% p.a. due from the Applicants on the date the cheque was issued.

5. The learned advocate for the Respondent would submit that the cheque was issued by the Applicant himself on making calculation of the amount due. It is therefore to be presumed that the amount under the cheque was really due from the Applicants. Then, it is a matter of evidence.

6. Since this Court prima facie finds that the amount mentioned in the cheque is more than what was actually due from the Applicants in terms of the promissory note, the order impugned herein is liable to be

set-aside. The Application is therefore allowed in terms of prayer clause (c). The observations made herein are prima facie in nature. The trial court shall not be influenced thereby while deciding the case on its own merits.

7. Application stands disposed of in above terms.

(R.G. AVACHAT, J.)

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