

11.07.2024
rc/ct.no.34
Item No.368

CRR No. 4635 of 2023

In the matter of : Arindam Adhikary

.....Petitioner

Ms. Rajnandini Das

...for the Petitioner

Affidavit of service filed by the petitioner is taken on record.

None appears for the opposite party despite service.

The petitioner is aggrieved by the order passed by the learned District and Sessions Judge, North 24 Parganas at Barasat in connection with Criminal Revision No. 288 of 2023 on September 25, 2023 affirming the order passed by the learned Additional Chief Judicial Magistrate, Barasat in Complaint Case No. 626 of 2019 on August 16, 2023 allowing the application filed by the opposite party under Section 143A of the Negotiable Instruments Act, 1881 (hereinafter referred to as "the Act of 1881") and directing the petitioner to pay Rs.70000/- as interim compensation, being 20% of the cheque value.

Learned counsel for the petitioner submits that in course of business transaction between the petitioner and his mother on one hand and the opposite party on the other hand, the opposite party granted loan to the petitioner to the tune of Rs.6,50,000/- and to his mother to the tune of Rs.1,60,000/- out of which an amount of Rs.3,50,000/- was repaid. The opposite party induced the petitioner and his mother to enter into an agreement on September 03, 2018 and forced the petitioner to issue 4 cheques in his favour drawn on Bandhan Bank, Bongaon Branch for

payment of the due amount. The petitioner lodged a complaint against the opposite party in this regard under Section 156(3) of the Code of Criminal Procedure which was registered as FIR No. 394 of 2019. The petitioner also sent an application to the Manager, Bandhan Bank, Bongaon Branch requesting “stop payment” since the cheques impugned were not issued by him voluntarily. In the meantime the opposite party sent one of the cheques bearing no. 000004 to the bank which was returned due to the instruction for stop payment given by the petitioner. The opposite party lodged the present complaint under Section 138 of the Act of 1881 on account of such dishonour.

Placing reliance on the authority in **Rakesh Ranjan Shrivastava** Vs. **The State of Jharkhand & Anr.** in **Criminal Appeal No. 741 of 2024** learned counsel submits that the Hon’ble Supreme Court has laid down broad parameters for exercising discretion under Section 143A of the Act of 1881. The parameters are set out hereunder :-

“c. The broad parameters for exercising the discretion under Section 143A are as follows :-

- i. The Court will have to prima facie evaluate the merits of the case made out by the complainant and the merits of the defence pleaded by the accused in the reply to the application. The financial distress of the accused can also be a consideration.

- ii. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
- iii. If the defence of the accused is found to be prima facie plausible, the Court may exercise discretion in refusing to grant interim compensation.
- iv. If the Court concludes that a case is made out to grant interim compensation, it will also have to apply its mind to the quantum of interim compensation to be granted. While doing so, the Court will have to consider several factors such as the nature of the transaction, the relationship, if any, between the accused and the complainant, etc.
- v. There could be several other relevant factors in the peculiar facts of a given case, which cannot be exhaustively stated. The parameters stated above are not exhaustive.”

It appears from the orders impugned that the parameters laid down by the Hon’ble Supreme Court as referred to above were not taken into consideration by both the courts in dealing with the application under Section 143A of the Act of 1881. The reason assigned by the learned Trial Court for allowing the application is that the complainant/opposite party shall suffer great difficulties since the sum claimed by him is quite substantial and he claims to be suffering in his business as a result of acute shortage of

funds. No other reason has been assigned by the learned Court in the orders impugned.

Upon consideration of the submission of the petitioner as well as material on record, this Court is inclined to hold that the orders impugned are required to be set aside/quashed and the learned Trial Court be directed to revisit the issue upon taking into consideration the parameters laid down by the Hon'ble Supreme Court of India.

Accordingly, the revisional application being CRR No. 4635 of 2023 is allowed.

The orders passed by the learned District and Sessions Judge, North 24 Parganas at Barasat in connection with Criminal Revision No. 288 of 2023 on September 25, 2023 and the order passed by the learned Additional Chief Judicial Magistrate, Barasat in Complaint Case No. 626 of 2019 on August 16, 2023 are quashed/set aside.

Learned Trial Court is directed to reconsider the application under Section 143A of the Act of 1881 in the light of the observation made by the Hon'ble Supreme Court of India in Criminal Appeal No. 741 of 2024 as stated above and pass a reasoned order, in accordance with law.

All parties shall act on the server copy of this order duly downloaded from the official website of this Court.

Urgent certified website copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Suvra Ghosh,J)