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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CRL.M.C. 816/2023

ARRI PRODUCTION HOUSE & ANR .....Petitioners

Through: Mr. Nitesh Kumar Singh, Mr. Devender Singh and Mr. Armaan Rakaeeya, Advocates.

versus

FRANKFINN ENTERTAINMANT COMPANY PVT.LTD. .....Respondent

Through: Mr. Kapil Midha and Mr. Garv Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **03.09.2024**

1. By way of present petition, the petitioners, who were arrayed as accused in the proceedings initiated by the respondent/complainant under Section 138 NI Act, seek to assail the impugned order dated 02.11.2022 passed by the learned Judicial Magistrate First Class (NI Act), Dwarka Court, Delhi, in Complaint Case No.23415/2021 titled as *'M/s Frankfinn Entertainment Company Pvt. Ltd. v. Arri Production House'* in an application under Section 143-A of the NI Act filed by the respondent/complainant whereby the petitioners were directed to pay 20% of the cheque amount towards interim compensation by the learned Trial Court.

2. Learned counsel for the petitioners contends that the parties have entered into an MoU dated 27.11.2019, vide which the respondent/complainant had agreed to invest a sum of Rs.1.15 crores for the

promotion of the subject movie. It is submitted that the respondent had released the said amount in tranches, which has adversely affected the release of the movie and its success. He further submits that the subject cheque was issued only towards security of the said investment and that there exists no liability towards the respondent. It is also submitted that the respondent has already approached the civil court by way of a Civil Suit being CS (Comm.) 668/2019 and the same is pending consideration before the concerned court.

3. Learned counsel for the respondent, on the other hand, has defended the impugned order. He contends that initially the parties had entered into the aforesaid MoU on 27.11.2019, vide which, it was agreed that the respondent would be shown as co-producer and that the petitioner had also agreed to give due credit to the respondent. He submits that on the petitioner's failure to act in terms of the aforesaid MoU, the civil suit came to be filed for, *inter alia*, the infringement of copyright and breach of MoU, declaration, as well as for permanent and mandatory injunction. He further submits that though the respondent had claimed damages, the amount under the said cheque is not part of any of the prayers. Furthermore, it is submitted that subsequently, a revenue sharing agreement was entered into between the parties on identical terms, wherein the issuance of the subject cheque towards security was reiterated.

4. The present petition came to be listed on 06.02.2023 wherein, while issuing notice, the petitioners sought an interim stay of the impugned order, which was declined. The said order was assailed before the Supreme Court vide SLP (Crl.) Diary No.29430/2023 which eventually came to be dismissed on 19.02.2024, by observing that the impugned order was interim

in nature.

5. I have heard learned counsel for the parties and have also gone through the relevant documents placed on record.

6. The power of the Court under Section 143A NI Act to award interim compensation is not in dispute, neither have the petitioners disputed entering into the said MoU and revenue sharing agreement, nor the issuance of the subject cheque. The petitioner only claims that the cheque was issued towards security despite there being no liability.

7. Recently, the Supreme Court in Rakesh Ranjan Shrivastava v. State of Jharkhand, reported as **(2024) 4 SCC 419** has held that the exercise of powers by the Court while deciding an application under Section 143A of the NI Act is not mechanical but on consideration of the relevant facts. Further, the Supreme Court has outlined the guidelines for awarding interim compensation under Section 143A NI Act in the aforenoted decision, which are extracted herienbelow:

> *27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:*
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> > *27.3.1. 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.*
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> > *27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.*
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> > *27.3.3. If the defence of the accused is found to be prima facie plausible, the court may exercise discretion in refusing to grant interim compensation.*
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> > *27.3.4. 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.

27.3.5. 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.

8. The petitioner, at the stage of framing of notice under Section 251 Cr.P.C, has taken up the defence that the respondent had already preferred a civil suit. During the course of the submissions, learned counsel for the respondent has categorically stated that the amount under the subject cheque is not part of any of the prayers in the aforementioned civil suit. Further, neither the issuance of the cheque, nor the signatures on the same, is denied by the petitioner.

9. Keeping in view the parameters outlined for consideration of an application under Section 143-A NI Act by the Supreme Court in the abovementioned decision, I find no ground to interfere with the impugned order. The petition is accordingly dismissed.

MANOJ KUMAR OHRI, J

SEPTEMBER 3, 2024/*rd*