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

\+ CRL.M.C. 5985/2023

FOCUS IMAGING AND RESEARCH CENTRE PVT. LTD AND ORS ....Petitioners

Through: Mr.Vivek Tiwari, Advocate

versus

AXIS BANK LTD. .....Respondents

Through: Mr. Rahul Chauhan, Advocate.

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% **02.08.2024**

1. By way of the present petition, the petitioners seek setting aside of the order dated 04.07.2023 passed by the ASJ (SFTC), Dwarka Court, New Delhi in Criminal Revision No.20/2023 whereby the revision preferred against the order of the Judicial Magistrate dated 29.11.2022 allowing the application moved by the respondent/complainant under Section 143A of the Negotiable Instruments Act (hereinafter referred to as 'NI Act') came to be dismissed.

2. Learned counsel for the petitioners submits at the outset that the revisional court failed to appreciate the contention of the petitioners that the cheque in question were given as security and even the respondent in his cross examination has admitted that the respondent used to take cheques as a security before giving any loan. He further submits that the order of the Judicial Magistrate suffers from infirmity as it fails to provide reasons for its decision. He also states that a settlement had been reached between the

parties for the amount of Rs.21 lacs before the court of Judicial Magistrate which is reflected in order dated 11.10.2022. Lastly, he submits that the calculation of the cheque amount is flawed in as much as the complaint does not state either the amount of loan taken nor the part payment made by the petitioners.

3. Per Contra, the learned counsel for the respondent has opposed the present petition contending that there is no infirmity or illegality with the impugned order or the order awarding compensation. He submits that business loan facilities were availed by the petitioners from the respondent and they had defaulted in its repayment in lieu of which debt the cheque in question was issued. Furthermore, since the genuineness of the signature was not disputed, and the petitioners had entered the plea of not guilty at the stage of 251 Cr.P.C., the requirements of Section 143A stood fulfilled. Lastly, he submits that no settlement was arrived at between the parties and the same is reflected in the order of the Judicial Magistrate dated 13.10.2022.

4. I have heard the submissions of the learned counsel for the parties and gone through the records.

5. The petitioners had availed business loan facilities from the respondent and failed to repay the equated monthly instalments to the respondent on time. Thereafter, the cheque in question bearing No. 022581 dated 08.12.2020 drawn on Allahabad Bank, H-12, Green Park Extn, New Delhi- 110016 for the amount of Rs.34,44,394/- was issued by the petitioners to the respondent. The cheque was dishonoured upon presentation and returned for the reason ‘Funds Insufficient’ on 16.12.2020. Legal notice was served upon the petitioners on 26.12.2020 and the criminal

complaint bearing No. CC NI Act/5387/2021 titled as "Axis Bank Vs Focus Imaging And Research Centre Pvt. Ltd." came to be filed on 08.02.2021. In the said complaint, the respondent had moved an application seeking interim compensation under Section 143A of the NI Act which came to be allowed by the Judicial Magistrate vide order dated 29.11.2022 who directed the petitioners to pay 20% of the cheque amount i.e. Rs 6,88,878.8/- via bank transfer to the respondent within 60 days. Petitioners preferred a criminal revision against the said order which came to be dismissed vide the impugned order dated 29.11.2022 which held that sufficient reasons had been given by the Magistrate in the order granting interim compensation and furthermore that the order relating to interim compensation was an interlocutory order and not amenable to revision jurisdiction.

6. Section 143A came to inserted in the NI Act by the amending Act No. 20 of 2018 with effect from 01.09.2018. The object of the amendment is to discourage unscrupulous drawers of cheques who prolong proceedings under the Act by filing appeals and obtaining stays which would cause injustice to the payee. Such a delay has the effect of compromising the sanctity of the cheque transactions. The amendment was intended to strengthen the credibility of cheques and help trade and commerce. To avail the benefit of Section 143A, In case of a summary trial or a summons case, the accused should have entered the plea of not guilty. In other cases, the compensation could be paid upon framing of charge. Further, the compensation cannot exceed 20% of the cheque amount. This provision is discretionary in nature, as held by the Supreme Court in Rakesh Ranjan Shrivastava v. State of Jharkhand, reported as **(2024) 4 SCC 419** :-

18. In the case of Section 143-A, the power can be exercised even before the accused is held guilty. Sub-section (1) of Section 143-A provides for passing a drastic order for payment of interim compensation against the accused in a complaint under Section 138, even before any adjudication is made on the guilt of the accused. The power can be exercised at the threshold even before the evidence is recorded. If the word "may" is interpreted as "shall", it will have drastic consequences as in every complaint under Section 138, the accused will have to pay interim compensation up to 20% of the cheque amount. Such an interpretation will be unjust and contrary to the well-settled concept of fairness and justice. If such an interpretation is made, the provision may expose itself to the vice of manifest arbitrariness. The provision can be held to be violative of Article 14 of the Constitution. In a sense, sub-section (1) of Section 143-A provides for penalising an accused even before his guilt is established.

19. Considering the drastic consequences of exercising the power under Section 143-A and that also before the finding of the guilt is recorded in the trial, the word "may" used in the provision cannot be construed as "shall". The provision will have to be held as directory and not mandatory. Hence, we have no manner of doubt that the word "may" used in Section 143-A, cannot be construed or interpreted as "shall". Therefore, the power under sub-section (1) of Section 143-A is discretionary.

7. The factors which are to be kept in mind while deciding an application under Section 143A NI Act have been enumerated by the Supreme Court in the aforenoted decision, as under :-

27.3. The broad parameters for exercising the discretion under Section 143-A are as follows:
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.
27.3.2. A direction to pay interim compensation can be issued, only if the complainant makes out a prima facie case.
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.

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. Coming to the facts of the present case, the Judicial Magistrate in his order awarding compensation, notes that a loan was given to the petitioners through bank, and there exists a loan agreement for the same. Though the petitioners had entered the plea of not guilty at the stage of framing of notice under Section 251 CrPC, the signature on the cheque are admitted. It was further stated that due to fire accident and Covid lockdown, they couldn't pay EMIs. The genuineness and correctness of Bank return memos, cheques and postal/courier receipts have been admitted. Though efforts were made for settlement, the same have been unsuccessful. Prima facie, a case has been made out by the respondent/complainant against the petitioners. It is also to be noted that neither the factum of the loan being taken, nor the genuineness of the signature on the cheque is disputed, and the only contentions raised are regarding the amount due which was filled in the cheque and whether or not the cheque were given as security, which are factual in nature and would be tested in trial.

9. Furthermore, if a mini-trial is conducted at the stage of deciding the S.143A application, it would defeat the very purpose of the amendment which is to discourage unscrupulous drawers of cheques who prolong proceedings and cause injustice to the payee of a dishonoured cheque who has to spend considerable time and resources in Court proceedings to realise

the value of the cheque. This Court is of the opinion that the order awarding compensation does not suffer from any infirmity and further since a prima facie case has been made out by the complainant, the said order is in conformity with the broad parameters laid down by the Supreme Court in Rakesh Ranjan Shrivastava (Supra). The revisional Court was correct in dismissing the revision preferred by the petitioners.

10. In view of the aforesaid discussions, petition is dismissed.

MANOJ KUMAR OHRI, J

August 02, 2024

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