



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

% Date of Decision: 14.03.2024

+ **CRL.M.C. 8435/2023 & CRL.M.A.31495/2023**

NARESH ARYA

..... Petitioner

Through: Mr. Nagendra Kasana, Mr. Rajesh Rathod and Mr. Aditya Sharma, Advocates.

Versus

SAVITRI KUKREJA

..... Respondent

Through: Mr K.S. Negi and Mr. Mohit Kukreja, Advocates.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT (ORAL)

1. By way of present petition filed under Section 482 Cr.PC, the petitioner seeks to assail the order dated 04.10.2023 passed by the learned District & Sessions Judge, South East, Saket Courts, New Delhi in CR. Revision No.374/2023 titled 'Naresh Arya v. Savitri Kukreja', whereby the said revision petition came to be dismissed.

2. Pertinently, the said revision petition was preferred by the petitioner against the order dated 07.01.2023 passed by learned MM in CC NI Act No.4662/2021 titled as 'Savitri Kukreja v. Naresh Arya', whereby respondent's application under Section 143A NI Act was allowed and the petitioner was directed to pay interim compensation of Rs 17,64,000/- i.e., 15% of the cheque amount.

3. Briefly, the facts as available from the record are that the respondent had preferred a criminal complaint alleging that the petitioner, in a transaction relating to sale of property, handed over two cheques dated



08.03.2021 for Rs.58,80,000/- each. The said cheques, when presented for encashment, were dishonoured with the remark 'funds insufficient' vide return memo dated 15.03.2021. A demand notice was issued on 17.03.2021, however, the petitioner failed to make the payment, leading to the filing of the said complaint. During the pendency of the said complaint, an application under Section 143A NI Act came to be filed.

4. Notably, in the criminal complaint, the respondent has claimed that she along with her son are the registered joint owner and in exclusive possession of the land situated at Tehsil Sohna, District Gurugram, Haryana. The petitioner had approached the respondent and her son to purchase the said plot and had offered a sum of Rs.1.68 crores as sale consideration. On the said understanding, the respondent and her son executed a sale deed in favour of the petitioner on 08.03.2021. The petitioner had issued three cheques, out of which two cheques got dishonoured, resulting into filing of the subject complaint.

5. Section 143A was introduced in the NI Act, 1881 by way of Amendment Act of 2018. Section 143A NI Act provides for payment of interim compensation by the accused, the moment he pleads not guilty. In other words, the said section clothes the Court with the power to award interim compensation, even before he is pronounced guilty. Such amount can even be recovered as a fine, as stipulated in sub-section (5) of Section 143A. It is worthwhile to note that use of the word 'may' implies that the exercise of power at this stage is discretionary. For the exercise of such power, the Court will have to prima facie evaluate the merits of the cases made out by the complainant and merits of the defence pleaded by the accused in reply to the application filed under Section 143(1). If the



complainant makes out a prima facie case, a direction for payment of interim compensation in terms of Section 143A can be issued. While deciding the quantum of said compensation, factors like nature of the transaction, relationship between the parties etc. would need to be considered.

6. In the present matter, at the stage of framing of notice, the petitioner took a defence that he had purchased one property from the respondent, against which the subject cheques had been given as security. At the time of admission/denial of documents under Section 294 Cr.P.C., the petitioner categorically admitted execution of the sale deed. The said sale deed contains the details of the two subject cheques and a recital to the effect that the consideration of Rs.1.68 crores is being paid by way of three cheques, including the two subject cheques.

7. From the above, it is evident that the petitioner has admitted to issuance of the subject cheques as well as execution of the sale deed. The only defence is that the said cheques were given as a security. The respondent has been able to show a prima facie case in her favor.

8. In these circumstances, this Court is of the considered opinion that the learned trial court has rightly exercised its discretion and directed payment of compensation to the extent of 15% of the cheque amount in favour of the respondent. The order passed by the learned MM was upheld by the revisionary court and this Court sees no ground to interfere with the same.

9. Consequently, the petition is dismissed alongwith pending application.

MANOJ KUMAR OHRI
(JUDGE)

MARCH 14, 2024/rd