



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL WRIT PETITION NO.808 OF 2024

Umesh Keshavrao Wazulkar .Vs. Nishant Multistate Coop. Credit Society Ltd., Akola
through Branch Manager, Ramesh Pralhad More

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Shri S.D. Chande, Advocate for petitioner.

Shri Raunak Kurani, Advocate for respondent.

CORAM : ANIL S. KILOR, J.

DATED : 13/02/2025

1. Heard.

2. In this petition, challenge is raised to the direction issued by the learned Judicial Magistrate First Class, (Court No.2), Malegaon, Dist. Washim to the petitioner to deposit 15% of the cheque amount i.e. Rs.2,30,250/- under Section 143-A of Negotiable Instrument Act, 1881, towards interim compensation vide order dated 29.09.2023, which was maintained by the learned Revisional Court vide judgment and order dated 04.07.2024.

3. The learned counsel for the petitioner submits that since there are allegations about the fraud and even the petitioner has disputed the signature and issuance of the cheque, the Court ought not to have directed the petitioner to deposit 15% amount. The learned counsel for the

petitioner further submits that no opportunity was given to the petitioner to lead the evidence and to point out the fraud committed in the present matter. It is pointed out that, in addition to the complaint made to the Manager, a police complaint was also made in this regard.

4. In the above referred backdrop, having gone through the record, it is evident that the above referred complaint to the Manager and the Police was made after more than one year on commission of alleged fraud. No justification is offered for not making such complaint immediately. Furthermore, it is a settled law that the fraud can be proved only by leading evidence. Similarly, the presumption under Section 139 of the Negotiable Instrument Act, 1881 is rebuttable and to rebut the same, the petitioner is to lead evidence. Thus, on both points namely to establish commission of fraud and to rebut the presumption under Section 139 of the Negotiable Instrument Act, 1881, the petitioner is required to lead evidence.

5. In the circumstances, the reasons recorded by the Courts below directing the petitioner to deposit 15% of the cheque amount i.e. Rs.2,30,250/- towards interim compensation is just and proper and needs no interference.

6. In the circumstances, the writ petition is **dismissed**.

7. At this stage, the learned counsel for the petitioner seeks time to file Special Leave Petition and till then, he prays for keeping the order in abeyance.

8. Time of three weeks is granted. Till then, the order be kept in abeyance. However, it is made clear that, on expiry of period of this order will come in force. It is further made clear that the period of three weeks will not be extended in any ground.

JUDGE