



**HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR**

S.B. Criminal Miscellaneous (Petition) No. 6765/2019

1. Solar4Max.com, E-63, Sector-A-5/6 Upside Tronica City, Loni, Ghaziabad, Up, Through Partner Sumit Bansal.
2. Sumit Bansal, Partner Firm Solar4Max.com, R/o C-12/66, Block/c-12, Yamuna Vihar, Delhi-53.

-----Petitioners

Versus

Oxide Power Product Pvt.ltd, Through Its Director Anil Maheshwari, R/o 26-B, Scheme No.2, Alwar.

-----Respondent

For Petitioner(s) : Mr. Jai Raj Tantia

For Respondent(s) : Mr. Ramesh Choudhary, PP

HON'BLE MR. JUSTICE SANJEEV PRAKASH SHARMA

Judgment / Order

Reportable:

31/01/2020

1. The petitioner has preferred this petition against the order passed by the court below rejecting the application for extension of time for depositing 20 % amount as per Section 148 of the Negotiable Instruments Act(amended), 2018.

2. Learned counsel submits that the petitioner was asked to deposit 20% of the amount within two months vide order dated 8th May, 2019. However, the petitioner met with an accident and therefore, he could not comply with the order dated 8th May, 2019 and presented on 17.9.2019 himself before the court alongwith a draft of amount of 20% i.e. Rs.2,80,000/-(Rupees Two Lacs Eighty Thousand only). However, the court refused to accept the draft and directed him to deposited the amount in cash and listed



the case on 23rd September, 2019. The petitioner brought the amount in cash on the date fixed but it was refused by the concerned court on the ground that the period prescribed in the limitation act has expired and observed that only the appellate court can extend the time. He therefore, filed an appeal for seeking extension of time which was rejected by the Additional Session Judge NO.2, Alwar vide order dated 24.9.2019 on the ground that the period provided u/s 148, after the amendment made in 2018 is 60 days can be extended by another 30 days and as 90 days period expired on 8.8.2019, therefore, time cannot be granted.

3. Learned counsel relies on the judgment passed by the High court of Punjab & Haryana at Chandigarh in the case of **Baljinder Singh Vs. Harpinder Kaur (CRM-M-54105-2019)** dated 10.1.2020 wherein 60 days time was further granted by the court in exercise of power under Section 482 Cr.P.C.

4. I have considered the submissions.

5. Section 148 was inserted vide amendment dated 16.8.2018 that apart Section 143A was also inserted by aforesaid Amendment Act. For the disposal of the case. It would be appropriate to quote the provisions of Section 143A & 148 which read as under:

2. Insertion of new section 143A. . In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), after section 143, the following section shall be inserted, namely:—

143A. Power to direct interim compensation. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the drawer of the cheque to pay interim compensation to the complainant—



- a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and
 (b) in any other case, upon framing of charge.

(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.

(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.

(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.

(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.

(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”.

3. Insertion of new section 148. In the principal Act, after section 147, the following section shall be inserted, namely:—

148. Power of Appellate Court to order payment pending appeal against conviction.

(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:

Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.

(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days





as may be directed by the Court on sufficient cause being shown by the appellant.

(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:

Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant."

6. From both the provisions quoted above, it is apparent that the power vests with the trial court as well as the appellate court for directing the drawee to pay interim compensation to the complainant up to 20% of the value of cheque. The interim compensation by the trial court can be granted at the stage where the accused felt guilty or upon framing of charge. Thus, there are two stages where the interim compensation can be granted after the period of 60 days and further extending by 30 days may be directed by the court. The Section 143A as well as 148 makes the provision directory and mandatory.

7. In the case of **Salem Advocate Bar Association Vs. Union of India** reported in 2005(6)SCC344 the Supreme Court held as under:

"20. The use of the word 'shall' in Order VIII Rule 1 by itself is not conclusive to determine whether the provision is mandatory or directory. We have to ascertain the object which is required to be served by this provision and its design and context in which it is enacted. The use of the word 'shall' is ordinarily indicative of mandatory nature of the provision but having regard to the context in which it is used or having regard to the intention of the legislation, the same can be construed as directory. The rule in question has to advance the cause of justice and not to defeat it. The rules of procedure are made to





advance the cause of justice and not to defeat it. Construction of the rule or procedure which promotes justice and prevents miscarriage has to be preferred. The rules or procedure are hand-maid of justice and not its mistress. In the present context, the strict interpretation would defeat justice."

8. In the case of **Kailash Vs. Nanhku & Ors.** reported in 2005(4)SCC480, the Supreme Court held as under:

46. We sum up and briefly state our conclusions as under:-

(iv) The purpose of providing the time schedule for filing the written statement under Order VIII, Rule 1 of CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the Court to extend the time. Though, the language of the proviso to Rule 1 of Order VIII of the CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the Procedural Law, it has to be held directory and not mandatory. The power of the Court to extend time for filing the written statement beyond the time schedule provided by Order VIII, Rule 1 of the CPC is not completely taken away."

9. In the case of **State of Bihar & Ors. Vs. Bihar Rajya Bhumi Vikas Bank Samiti** reported in 2018(9)SCC472, the Supreme Court held as under:

"23. It will be seen from this provision that, unlike Section 34(5) and (6), if an Award is made beyond the stipulated or extended period contained in the Section, the consequence of the mandate of the Arbitrator being terminated is expressly provided. This provision is in stark contrast to Section 34(5) and (6) where, as has been stated hereinabove, if the period for deciding the application Under Section 34 has elapsed, no consequence is provided. This is one more indicator that the same Amendment Act, when it provided time periods in different situations, did so intending different consequences."





10. However in relation to the Rent Control Act, the Supreme Court in the case of **Mohd.Aslam Vs. Union of India & Ors.** reported in 2003(2)576 observed as under:

37. The court's jurisdiction to interpret a statute can be invoked when the same is ambiguous. It is well known that in a given case the Court can iron out the fabric but it cannot change the texture of the fabric. It cannot enlarge the scope of legislation or intention when the language of provision is plain and unambiguous. It cannot add or subtract words to a statute or read something into it which is not there. It cannot re-write or recast legislation. It is also necessary to determine that there exists a presumption that the legislature has not used any superfluous words. It is well-settled that the real intention of the legislation must be gathered from the language used. It may be true that use of the expression 'shall or may' is not decisive for arriving at a finding as to whether statute is directory or mandatory. But the intention of the legislature must be found out from the scheme of the Act. It is also equally well-settled that when negative words are used the courts will presume that the intention of the legislature was that the provisions are mandatory in character.

11. A careful reading of view of the supreme court shows that the amendment while inserting the section 143A & 148 provides for grant of interim compensation in absence of the amount being paid within the said period. However, it does not entail any consequences and the provision do not state that non compliance would have a particular result. Thus, in facts of each case, the period of depositing the amount can always be extended as the purpose in making amendment is essentially to grant relief to the aggrieved party by immediate compensation of payment of 20% of the total value of the cheque.





12. In view of above and law laid down by the Apex Court, the order passed by the learned Additional Sessions Judge dated 24.9.2019 is set aside. The trial court is directed to deposit the amount and thereafter proceed. The amount is directed to be deposited within a period of 15 days from the date of receipt of certify copy of this order, failing which the court shall proceed, as if the order has not been passed. No coercive steps shall be taken if the petitioner depositing the amount.

13. With the aforesaid directions, the criminal misc. petition is disposed of.

14. All pending applications also stand disposed of.

(SANJEEV PRAKASH SHARMA),J

Anu /397

