

IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 31ST DAY OF MAY 2019

BEFORE

THE HON'BLE MR. JUSTICE ALOK ARADHE

CRIMINAL PETITION NO.3204 OF 2019

BETWEEN:

1. M/s. A & B Estates and properties
(A Registered partnership firm)
Having its office at No.7 and 8
27th Main, I sector HSR Layout
Bengaluru – 560 102
Represented by its partners
Sri. Ashraf Ali.
2. Sri. Ashraf Ali
S/o late V R Abdullah
Aged about 49 years
No.15 ground floor
Copper Arch, infantry Road
Bengaluru – 560 001.
3. Sri. Brijesh Reddy
S/o Chandra Reddy
aged about 50 years
No.7 and 8, 27th Main
1st Sector, HSR layout
Bengaluru – 560 102.

... Petitioners

(By Sri. Manjunath. S, Advocate)

AND:

M/s. BSF House Building
 Co-operative society ltd.,
 Having its office at STC BSF Campus
 Op-AFS, Yelahanka Bellary Road,
 Bengaluru-560 063
 Represented by its president.

... Respondent

(By Sri. S. M. Dayananda Patil, Advocate)

This Criminal Petition is filed under Section 482 of Cr.P.C. praying to set aside the order dated 14.11.2018 passed by the Hon'ble XXXVII Additional Chief Metropolitan Magistrate at Bangalore on the application Chief Metropolitan Magistrate at Bangalore on the application filed U/s.143-A of N.I. Act produced at Annexure "A".

This Petition coming on for *Admission*, this day, the Court made the following:-

ORDER

Sri. Manjunath S., learned counsel for the petitioners.

Sri. S.M. Dayananda Patil, learned counsel for the respondent.

The petition is admitted for hearing. With the consent of learned counsel for the parties, the same is heard finally.

2. In this petition under Section 482 of the Code of Criminal Procedure, 1973, the petitioners *inter alia* have assailed the validity of the order dated 14.11.2018 passed by the XXXVII Additional Chief Metropolitan Magistrate, Bengaluru on the application filed under Section 143A of the Negotiable Instruments (Amendment) Act, 2018 (hereinafter referred to as 'the Act' for short).

3. When the matter was taken up today, learned counsel for the petitioners has raised a singular contention that the impugned order is a non-speaking order since no reasons have been assigned by the learned Magistrate while awarding the interim compensation to the extent of 20% of the cheque amount.

4. On the other hand, learned counsel for the respondent submits that Section 143A of the Act empowers the Court to demand from the petitioner to deposit 20% of the cheque amount as

interim compensation and the interim compensation has been directed to be awarded to the respondent on account of the directory tactics adopted by the petitioners.

5. I have considered the submissions made by the learned counsel for the parties. Section 143A(2) of the Act provides that the interim compensation under Sub-Section(1) shall not exceed 20% of the amount of the cheque. In other words, the aforesaid provision confers the discretion of the Court to award the interim compensation, which can be upto 20%. It is trite law that whenever statute confers discretion on the Court, the aforesaid power has to be exercised by assigning reasons. In the instant case, no reasons have been assigned by the Court for directing the petitioners to deposit 20% of the cheque amount.

6. In view of the preceding analysis, the impugned order dated 14.11.2017 is quashed and

set aside. The learned Magistrate shall afford an opportunity of hearing to the parties and shall decide the application afresh within a period of three weeks from the date of receipt of certified copy of the order passed today by a speaking order.

7. It is made clear that it would be open to both the parties to raise such contentions as may be available to them under law.

8. With the aforesaid directions, the petition is disposed of.

**Sd/-
JUDGE**

Mds/-