



Litigation Update: Retrospective Applicability of the Negotiable Instruments (Amendment) Act, 2018

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Dear All,

Recently, the Bombay High Court in ***Ajay Vinodchandra Shah v The State of Maharashtra & anr (Criminal Writ Petition No.258 of 2019 decided on 14 March 2019)*** ruled upon the question of the retrospective applicability of the provisions of the Negotiable Instruments (Amendment) Act, 2018 (“**Amending Act**”).

Background:

The Petitioner approached the High Court challenging the legality and validity of three orders dated 3.8.2018 passed by the Sessions Court under Section 148 of the Amending Act by which the Petitioner was directed to deposit 25% of the amount of the compensation as a condition precedent to maintain an order of the bail or to entertain the appeal against the order of conviction in the Sessions Court.

Submissions of the Petitioner:

The Petitioner *inter alia* submitted that Section 148 of the Amending Act is in the nature of substantive law. Therefore, given that the said section was not in force at the time the offence was committed, the same should not have been applied by the Sessions Court with retrospective effect.

Submissions of the Respondents:

The Respondents on the other hand argued that direction of making a deposit under Section 148 of the Amending Act can be given retrospectively because the said provision is a beneficial legislation enacted with the intent to give relief a complainant in respect of the offence of dishonour of a cheque.

Ruling of the High Court:

The High Court taking into consideration the above, agreed with the Respondents that the Amending Act is in the nature of a beneficial legislation enacted for public good and therefore it is incorrect to hold that the amendments would be applicable only to complaints filed after the Amending Act was introduced i.e. 2 August 2018.

Pertinently, the High Court noted that if the plea of the Accused is recorded or charge is not framed, then, the court can pass orders under Section 143A and/or Section 148 of the Act as the case may be.

Legislative provisions:

The questions of law raised in the aforesaid case of ***Ajay Vinodchandra Shah v The State of Maharashtra & anr*** arose by virtue of the Amending Act which came into force on 2 August 2018 with a view to address the issue of undue delay in final resolution of cheque dishonour cases so as to provide relief to payees of dishonoured cheques and to discourage frivolous and unnecessary litigation.

Key highlights of the amendments:

I. Section 143 (A)-Deposit of interim compensation.

- a. In the event an Accused pleads ‘not guilty’ to an accusation made in a complaint, the trial court is vested with the discretion to direct the Accused to pay compensation to the complainant

pending trial. The amount of compensation however cannot exceed a sum of 20% of the amount of the dishonoured cheque.

- b. The compensation is required to be paid by the Accused to the Complainant within a period of 60 days from being so directed. This period is extendable by a further 30 days on the Accused showing sufficient cause.
- c. In the event of non-payment of compensation by the Accused, the court can direct the recovery of the same as if it were a fine imposed under Section 421 of the Code of Criminal Procedure, 1973.
- d. Upon an order of acquittal, the Complainant is required to return the interim compensation so received along with interest at bank rates as prescribed by the Reserve Bank of India.

II. Section 148- Deposit of fine/compensation in appeal

- a. In an appeal against conviction under Section 138 of the Act, the appellate court is empowered to direct the Accused to deposit a minimum of 20% of the fine/compensation awarded by the trial court.
- b. Pertinently, the aforesaid deposit amount is in addition to a deposit made by the Accused under Section 143A of the Act
- c. This deposit is to be made with the Court within a within a period of 60 days from being so directed, further extendable by a period of 30 days on the Accused showing sufficient cause.
- d. Upon a deposit being made, the Court may release the same to the Complainant at any time during pendency of the appeal.
- e. Upon an order of acquittal, the Complainant is required to return the interim compensation so received along with interest at bank rates as prescribed by the Reserve Bank of India.

As per the Statement of Objects and Reasons, the aforesaid amendments are the result of several representations from the public including trading community relating to pendency of cheque dishonour cases. It is stated therein that the proposed amendments seek to strengthen the credibility of cheques and help trade and commerce in general by allowing lending institutions, including banks, to continue to extend financing to the productive sectors of the economy.

For any queries or comments on this update, please feel free to contact us at insights@elp-in.com.

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