HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR

S.B. Criminal Miscellaneous (Petition) No. 1623/2019

Rashmi Khandelwal W/o Shri Rajendra Singh Sharma, D/o Shri Pramod Khandelwal, R/o Sahyog Nagar, Presently R/o C/o Khandelwal Gheeya Mali Ki Haveli, Near Paththar Ki Tall, Anah Gate, Bajariya, Police Station Atalbandh, District Bharatpur, Raj.

----Petitioner

Versus

Kanhiyalal S/o Shri Ramesh Chand, Aged About 38 Years, R/o Kherapati Mohalla, Police Station Atalbandh, District Bharatpur, Raj.

----Respondent

Connected With

S.B. Criminal Miscellaneous (Petition) No. 1672/2019

Rajendra Singh Sharma S/o Late Shri Shobharam Sharma, R/o Sahyog Nagar, Bharatpur, Police Station Mathura Gate, Bharatpur, Raj.

----Petitioner

Versus

Ganesh Kumar S/o Shri Baldev Singh, R/o Outside Surajpole Gate, Bharatpur, Police Station Mathura Gate, Bharatpur, Raj.

----Respondent

S.B. Criminal Miscellaneous (Petition) No. 1674/2019

Rashmi Khandelwal D/o Shri Pramod Khandelwal, W/o Shri Rajendra Singh Sharma, Aged About 38 Years, R/o Behind Paththar Ki Tall, Gheeya Maliyon Ki Haveli, Police Station Atalbandh, Bharatpur, Raj.

----Petitioner

Versus

Ganesh Kumar S/o Shri Baldev Singh, Aged About 32 Years, R/o Outside Surajpole Gate, Bharatpur, Police Station Mathura Gate, Bharatpur, Raj.

----Respondent

For Petitioner(s) : Mr. Yogesh Singhal
For Respondent(s) : Mr. Jitendra Singh

HON'BLE MR. JUSTICE ANOOP KUMAR DHAND

Order

Reserved on : 10/01/2025.
Pronounced on : 16/01/2025.
Reportable

1. The issue involved in this petition is "whether the amended provision contained under Section 143A of the Negotiable Instruments Act, 1881 would apply on the complaint filed prior to enactment and enforcement of this provision?"

2. Since, common question of law and facts are involved in these petitions. Hence, with the consent of the counsel for the parties, all these matters have been taken for final disposal and the same are decided by this common order.

3. Learned counsel for the petitioner submits that the respondent-complainant (hereinafter referred to as the complainant) has submitted three different complaints against the accused-petitioner (hereinafter referred to as the petitioner) for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the 'Act of 1881') on three different occasions i.e. on 28.08.2017, 01.04.2017 and 11.08.2017. Counsel submits that at the time of filing of the complaints under Section 138, there was no provision for the payment of interim compensation of 20% of the cheque amount to the complainant under the Act of 1881.

4. Counsel further submits that the amended provision contained under Section 143A came into force with effect from 01.09.2018, introducing a provision for issuing directions for the payment of interim compensation to the complainant.

5. Counsel submits that the amended provision contained under Section 143A of the Act of 1881, cannot be applied with its retrospective effects on the complaints filed before this amendment. Counsel also submits that the amended provision contained under Section 143A of the Act of 1881 would be applicable upon those complaints filed on or after 01.09.2018.

6. Counsel submits that overlooking the material aspect in the matter, the learned Court below has gravely erred in passing the order impugned directing the petitioner to pay interim compensation that is 20% of the cheque amount to the complainant. Counsel submits that such direction cannot be issued by the Trial Court. In support of his contentions, and he has placed reliance upon the Judgment passed by the Co-ordinate Bench of this Court in the case of **Sidharth Jain Vs. Nidhi Financial Services** reported in **2023 (4) WLC 719 (Rajasthan).** Counsel submits that under these circumstances, the order impugned passed by the Court below is not sustainable in the eyes of law and is liable to be quashed and set aside.

7. *Per contra*, learned counsel for complainant opposed the arguments raised by counsel for the petitioner and submitted that in order to avoid the delay tactics adopted by the accused persons in payment of the due amount to the aggrieved party, the legislature has brought the said amendment. He submits that Section 143A of the Act of 1881 was brought in picture for issuing directions to the accused to pay interim compensation to the complainant during pendency of the complaint. Counsel submits that similarly, the same provision was kept under Section 148 of the Act of 1881 at the stage of appeal, wherein the same direction

of payment of 20% amount of arrears can be issued. Counsel submits that giving interpretation to Section 148 of the Act of 1881, the **Hon'ble Apex Court** in the case of **Surinder Singh Deswal & Ors. Vs. Virender Gandhi** reported in **2019(8) Scale 445** has held that the amended provision of the Section 148 Act of 1881 can be given retrospective effect even upon the complaints filed prior to the amendment. Counsel submits in these circumstances, the Trial Court has not committed an error in passing the order impugned which warrants any interference of this Court.

8. Heard. Considered the submissions made at Bar and perused the material available on the record.

9. This fact is not in dispute that the complainant submitted three different complaints under Section 138 of the Act of 1881 against the petitioner before the Trial Court on 28.08.2017, 01.04.2017 & 11.08.2017 respectively with the allegations that the cheques issued by the petitioner were dishonoured. This fact is also not in dispute that at the time of commission of the alleged offence and filing of complaints, there was no provision of payment of any interim compensation to the complainant under the Act of 1881 by the accused during the pendency of trial.

10. The Legislature brought and introduced a new provision for payment of interim compensation by the accused to the complainant by incorporating a new provision in the form of Section 143A of the Act of 1881 and the new amended provision came into force with effect from 01.09.2018. The new Section 143A of the Act of 1881 reads as under:-

"Section 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 (2 of 1974).

(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 (2 of 1974), shall be reduced by the amount paid or recovered as interim compensation under this section."

11. On the basis of, and with the strength of the new provision under Section 143A of the Act of 1881, the Trial Court has directed the petitioner to pay 20% of the cheque amount to the

complainant, as interim compensation, by way of passing the impugned orders.

12. Aggrieved by these impugned orders, the petitioners have approached this Court by challenging the same.

13. Bare perusal of Section 143A of the Act of 1881 indicates that the Court trying an offence under Section 138 of the Act of 1881, may direct the drawer of the cheque to pay interim compensation to the complainant i.e. amount not exceeding 20% of the cheque amount. The sub-section (4) of Section 143A of the Act of 1881 provides that in case the drawer of the cheque is acquitted, the Court shall direct the complainant to repay the same amount to the drawer.

14. This fact is not in dispute that all the three complaints under Section 138 of the Act of 1881 have been submitted by the complainant against the petitioners in the year 2017 i.e. prior to enactment, enforcement and insertion of the amended Section 143A of the Act of 1881. The new provision of payment of interim compensation came into picture and saw the light of day on 01.09.2018. So now, the precise issue which is required to be decided in these petitions, is that "whether this new provision can be applied with it retrospective effect or prospective effect?"

15. While considering the general principles concerning the 'retrospectivity of legislation' in the context of Section 158-BE inserted in the Income Tax Act, 1961, it was observed by the Hon'ble Apex Court in the case of **Commissioner of Income Tax (Central)-I, New Delhi vs. Vatika Township Private Limited** reported in **2015(1) SCC 1** as under:-

> "28. Of the various rules guiding how a legislation has to be interpreted, one established rule is that unless a contrary intention appears, a legislation is presumed not to be intended to have a retrospective operation. The idea behind the rule is that a current law should govern current activities. Law passed today cannot apply to the events of the past. If we do something today, we do it keeping in view the law of today and in force and not tomorrow's backward adjustment of it. Our belief in the nature of the law is founded on the bedrock that every human being is entitled to arrange his affairs by relying on the existing law and should not find that his plans have been retrospectively upset. This principle of law is known as lex prospicit non respicit: law looks forward not backward. As was observed in Phillips v. Eyre, a retrospective legislation is contrary to the general principle that legislation by which the conduct of mankind is to be regulated when introduced for the first time to deal with future acts ought not to change the character of past transactions carried on upon the faith of the then existing law."

16. Similarly, while considering the effect of the modified application of the provisions of the Code, as a result of Section 20(4)(bb) of the Terrorist and Disruptive Activities (Prevention) Act, 1987, whereunder the period for filing challan or charge-sheet could get extended, the Hon'ble Supreme Court considered the issue about the retrospective operation of the concerned provisions in **Hitendra Vishnu Thakur and others vs. State of Maharashtra and others** reported in **1994(4) SCC 602** as under:-

> "26. The Designated Court has held that the amendment would operate retrospectively and would apply to the pending cases in which investigation was not complete on the date on which the Amendment Act came into force and the challan had not till then been filed in the court. From the law settled by this Court in various cases the illustrative though not exhaustive principles which emerge with regard to the ambit and scope of an Amending Act and its retrospective operation may be culled out as follows:
>
> (i) A statute which affects substantive rights is presumed to be prospective in operation unless made retrospective,

either expressly or by necessary intendment, whereas a statute which merely affects procedure, unless such a construction is textually impossible, is presumed to be retrospective in its application, should not be given an extended meaning and should be strictly confined to its clearly defined limits.

(ii) Law relating to forum and limitation is procedural in nature, whereas law relating to right of action and right of appeal even though remedial is substantive in nature.

(iii) Every litigant has a vested right in substantive law but no such right exists in procedural law.

(iv) A procedural statute should not generally speaking be applied retrospectively where the result would be to create new disabilities or obligations or to impose new duties in respect of transactions already accomplished.

(v) A statute which not only changes the procedure but also creates new rights and liabilities shall be construed to be prospective in operation, unless otherwise provided, either expressly or by necessary implication."

17. The principle as culled out in points No. (iv) & (v) of the above judgment of the Apex Court in the case of **Hitendra Vishnu Thakur** (supra) are apposite to the present fact situation.

18. This Court cannot lose sight of the fact that, prior to insertion of the new provision, i.e., Section 143A in the Act of 1881, there was no provision in the Act for issuing directions to the drawer of cheque to pay interim compensation of 20% of the cheque amount to the complainant prior to the commission of the offence under Section 138 of the Act of 1881.

19. At the same time a new provision was inserted in the Act of 1881 with effect from 01.09.2018 in the form of Section 148 giving power to the Appellate Court to order payment during pendency of an appeal against conviction. For ready reference Section 148 of the Act of 1881 is reproduced as under:-

> "Section 148: Power of Appellate Court to order payment pending appeal against conviction.
>
> (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), 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:
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> Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.
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> (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."

20. It is worthy to note here that both the new provisions i.e. Section 143A and Section 148 were inserted in the Act of 1881 with effect from 01.09.2018.

21. Hon'ble Apex Court in the case of **Surinder Singh Deswal** (supra) has held that the new provisions contained under Section 148 of the Act of 1881 as amended on 01.09.2018 shall be applicable to the appeals against the order of conviction and sentence for the offence under Section 138 of the Act of 1881, even in the cases where the criminal complaints for the offence

under Section 138 of the Act of 1881 were filed prior to the amending Act No. 20/2018 i.e. prior to 01.09.2018 and it has been held in Para 8, 8.1 & 9 as under:-

> "8. It is the case on behalf of the appellants that as the criminal complaints against the appellants under Section 138 of the N.I. Act were lodged/filed before the amendment Act No. 20/2018 by which Section 148 of the N.I. Act came to be amended and therefore amended Section 148 of the N.I. Act shall not be made applicable. However, it is required to be noted that at the time when the appeals against the conviction of the appellants for the offence under Section 138 of the N.I. Act were preferred, Amendment Act No. 20/2018 amending Section 148 of the N.I. Act came into force w.e.f. 1.9.2018. Even, at the time when the appellants submitted application/s under Section 389 of the Cr.P.C. to suspend the sentence pending appeals challenging the conviction and sentence, amended Section 148 of the N.I. Act came into force and was brought on statute w.e.f. 1.9.2018. Therefore, considering the object and purpose of amendment in Section 148 of the N.I. Act and while suspending the sentence in exercise of powers under Section 389 of the Cr.P.C., when the first appellate court directed the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court, the same can be said to be absolutely in consonance with the Statement of Objects and Reasons of amendment in Section 148 of the N.I. Act.
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> 8.1 Having observed and found that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of Section 138 of the N.I. Act was being frustrated, the Parliament has thought it fit to amend Section 148 of the N.I. Act, by which the first appellate Court, in an appeal challenging the order of conviction under Section 138 of the N.I. Act, is conferred with the power to direct the convicted accused – appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court. By the amendment in Section 148 of the N.I. Act, it cannot be said that any vested right of appeal of the accused – appellant has been taken away and/or affected. Therefore, submission on behalf of the appellants that amendment in Section 148 of the N.I. Act shall not be made applicable retrospectively and more particularly with respect to cases/complaints filed prior to 1.9.2018

shall not be applicable has no substance and cannot be accepted, as by amendment in Section 148 of the N.I. Act, no substantive right of appeal has been taken away and/or affected. Therefore the decisions of this Court in the cases of Garikapatti Veeraya (supra) and Videocon International Limited (supra), relied upon by the learned senior counsel appearing on behalf of the appellants shall not be applicable to the facts of the case on hand. Therefore, considering the Statement of Objects and Reasons of the amendment in Section 148 of the N.I. Act stated hereinabove, on purposive interpretation of Section 148 of the N.I. Act as amended, we are of the opinion that Section 148 of the N.I. Act as amended, shall be applicable in respect of the appeals against the order of conviction and sentence for the offence under Section 138 of the N.I. Act, even in a case where the criminal complaints for the offence under Section 138 of the N.I. Act were filed prior to amendment Act No. 20/2018 i.e., prior to 01.09.2018. If such a purposive interpretation is not adopted, in that case, the object and purpose of amendment in Section 148 of the N.I. Act would be frustrated. Therefore, as such, no error has been committed by the learned first appellate court directing the appellants to deposit 25% of the amount of fine/compensation as imposed by the learned trial Court considering Section 148 of the N.I. Act, as amended.

9. Now so far as the submission on behalf of the appellants that even considering the language used in Section 148 of the N.I. Act as amended, the appellate Court "may" order the appellant to deposit such sum which shall be a minimum of 20% of the fine or compensation awarded by the trial Court and the word used is not "shall" and therefore the discretion is vested with the first appellate court to direct the appellant – accused to deposit such sum and the appellate court has construed it as mandatory, which according to the learned Senior Advocate for the appellants would be contrary to the provisions of Section 148 of the N.I. Act as amended is concerned, considering the amended Section 148 of the N.I. Act as a whole to be read with the Statement of Objects and Reasons of the amending Section 148 of the N.I. Act, though it is true that in amended Section 148 of the N.I. Act, the word used is "may", it is generally to be construed as a "rule" or "shall" and not to direct to deposit by the appellate court is an exception for which special reasons are to be assigned. Therefore amended Section 148 of the N.I. Act confers power upon the Appellate Court to pass an order pending appeal to direct the Appellant-Accused to deposit the sum which

> shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the Appellant-Accused under Section 389 of the Cr.P.C. to suspend the sentence. The aforesaid is required to be construed considering the fact that as per the amended Section 148 of the N.I. Act, a minimum of 20% of the fine or compensation awarded by the trial court is directed to be deposited and that such amount is to be deposited within a period of 60 days from the date of the order, or within such further period not exceeding 30 days as may be directed by the appellate court for sufficient cause shown by the appellant. Therefore, if amended Section 148 of the N.I. Act is purposively interpreted in such a manner it would serve the Objects and Reasons of not only amendment in Section 148 of the N.I. Act, but also Section 138 of the N.I. Act. Negotiable Instruments Act has been amended from time to time so as to provide, inter alia, speedy disposal of cases relating to the offence of the dishonoured of cheques. So as to see that due to delay tactics by the unscrupulous drawers of the dishonoured cheques due to easy filing of the appeals and obtaining stay in the proceedings, an injustice was caused to the payee of a dishonoured cheque who has to spend considerable time and resources in the court proceedings to realise the value of the cheque and having observed that such delay has compromised the sanctity of the cheque transactions, the Parliament has thought it fit to amend Section 148 of the N.I. Act. Therefore, such a purposive interpretation would be in furtherance of the Objects and Reasons of the amendment in Section 148 of the N.I. Act and also Sec 138 of the N.I. Act."

22. It is not worthy to mention here that the Hon'ble Apex Court dealt with the applicability of Section 148 of the Act of 1881, even on the complaints filed prior to 01.09.2018 but the issue of applicability of Section 143A of the Act of 1881 was not under challenge in the case of Surinder Singh Deswal @ Col. S.S. Deswal (supra) before the Hon'ble Apex Court.

23. The issue of applicability of the new provision of Section 143A of the Act of 1881 on the complaints filed prior to 01.09.2018 came up before the Hon'ble Apex Court in the case of

G.J. Raja vs. Tejraj Surana reported in **AIR 2019 SC 3817** and it was held by the Hon'ble Apex Court that prior to insertion of Section 143A of the Act of 1881, there was no provision under the Act of 1881 to direct the accused to pay interim compensation to the complainant prior to his conviction for the offence under Section 138 of the Act of 1881. It was held that provisions of Section 143A of the Act of 1881 would apply with its prospective effect and the provisions of Section 148 of the Act of 1881 would not apply with its prospective effect after conviction of the accused for the offence under Section 138 of the Act of 1881 and it was held by the Hon'ble Apex Court in Para 20 to 24 of the judgment as follows:-

> "20. It must be stated that prior to the insertion of Section 143A in the Act there was no provision on the statute book whereunder even before the 4 (1997) 7 SCC 131 Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana pronouncement of the guilt of an accused, or even before his conviction for the offence in question, he could be made to pay or deposit interim compensation. The imposition and consequential recovery of fine or compensation either through the modality of Section 421 of the Code or Section 357 of the code could also arise only after the person was found guilty of an offence. That was the status of law which was sought to be changed by the introduction of Section 143A in the Act. It now imposes a liability that even before the pronouncement of his guilt or order of conviction, the accused may, with the aid of State machinery for recovery of the money as arrears of land revenue, be forced to pay interim compensation. The person would, therefore, be subjected to a new disability or obligation. The situation is thus completely different from the one which arose for consideration in Employees' State Insurance Corporation case.
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> 21. Though arising in somewhat different context, proviso to Section 142(b) which was inserted in the Act by Amendment Act 55 of 2002, under which cognizance could now be taken even in respect of a complaint filed

beyond the period prescribed under Section 142(b) of the Act, was held to Criminal Appeal No. 1160 of 2019 @ SLP(Crl.)No.3342 of 2019 G.J. Raja vs. Tejraj Surana be prospective by this Court in Anil Kumar Goel v. Kishan Chand Kaura. It was observed:-

> "10. There is nothing in the amendment made to Section 142(b) by Act 55 of 2002 that the same was intended to operate retrospectively. In fact that was not even the stand of the respondent. Obviously, when the complaint was filed on 28-11- 1998, the respondent could not have foreseen that in future any amendment providing for extending the period of limitation on sufficient cause being shown would be enacted."

22. In our view, the applicability of Section 143A of the Act must, therefore, be held to be prospective in nature and confined to cases where offences were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation.

23. We must, however, advert to a decision of this Court in Surinder Singh Deswal and Ors. vs. Virender Gandhi where Section 148 of the Act which was also introduced by the same Amendment Act 20 of 2018 from 01.09.2018 was held by this Court to be retrospective in operation. As against Section 143A of the Act which applies at the trial stage that is even before the pronouncement of guilt or order of conviction, Section 148 of the Act applies at the appellate stage where the accused is already found guilty of the offence under Section 138 of the Act. It may be stated that there is no provision in Section 148 of the Act which is similar to Sub-Section (5) of Section 143A of the Act. However, as a matter of fact, no such provision akin to sub-section (5) of Section 143A was required as Sections 421 and 357 of the Code, which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the Act. Therefore, the decision of this Court in Surinder Singh Deswal stands on a different footing.

24. In the ultimate analysis, we hold Section 143A to be prospective in operation and that the provisions of said Section 143A can be applied or invoked only in

> cases where the offence under Section 138 of the Act was committed after the introduction of said Section 143A in the statute book. Consequently, the orders passed by the Trial Court as well as the High Court are required to be set aside. The money deposited by the Appellant, pursuant to the interim direction passed by this Court, shall be returned to the Appellant along with interest accrued thereon within two weeks from the date of this order.

24. Considering the aforementioned judgment passed by the Hon'ble Apex Court in the case of G.J. Raja (supra) it has been held by the Co-ordinate Benches of this Court in the case of **Budh Ram Regar Vs. Sanwar Mal Mochi** reported in **2019 (3) RLW 2673 (Raj.)** and **Sidharth Jain Vs. Nidhi Financial Services** reported in **2023 (4) WLC 719** that the provision contained under Section 143A of the Act of 1881 has no retrospective application.

25. In the light of the judgment passed by the Hon'ble Apex Court in the case of G.J. Raja (supra) it is clear that Section 143A of the Act of 1881 has its prospective effect and the same is applicable upon the complaints filed under Section 138 of the Act of 1881 after introduction/insertion of Section 143A of the Act of 1881 i.e. after 01.09.2018. This provision cannot have its retrospective effect upon the complaints filed prior to 01.09.2018.

26. In view of the discussion made hereinabove, these petitions deserve to be and are hereby allowed. The impugned orders passed by the Trial Court stands quashed and are hereby set aside. The amount (if any) deposited by the petitioners, pursuant to any order, shall be refunded to him/her (as the case may be) with interest within a period of four weeks from the date of receipt of this order.

27. Stay applications and all application(s) (pending if any) also stand disposed of.

28. No order as to costs.

(ANOOP KUMAR DHAND),J

NEERU /21-23