



An Analysis on Rising Litigation U/S. 138 of Nia and its Alternative Remedies

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ABSTRACT

The Indian legal framework pertaining to the laws concerning promissory notes, bills of exchange, and cheques is addressed in the Negotiable Instruments Act, 1881. Cheques are commonly used in a wide range of transactions carried out between commercial institutions for trading purposes, but dishonour of cheques is an important issue, which has sparked an increase in litigation under Section 138 of the Act. This paper intends to examine the causes due to which litigation on account of dishonour of cheques is increasing, then further discuss alternative remedies, and finally propose measure to prevent dishonour of cheques.

This study is based on the doctrinal research methodology as it relied on secondary date from legislation, articles, journals, and books. The research spotlights the importance of understanding the characteristics of cheques, modes of dishonour, and punishment for dishonour. This identifies the causes for increasing litigation in dishonour of cheques. Besides the utilization of electronic payments, the paper goes ahead to delve into alternative measures in place of cheques usage beyond Section 138 criminal litigation, into civil suits for recovery, arbitration, mediation and conciliation, complaint under Consumer Protection Act, 2019, negotiation and settlements. The possible alternative solutions could therefore lie in a shift towards electronic modes of payment and embracing alternative dispute resolution mechanisms that can serve to negate the problems associated with paper cheques and litigation under Section 138 of the Act.

Keywords:- Negotiable Instruments, Cheques, Dishonour, Alternative remedies, electronic payments.

INTRODUCTION

The Negotiable Instruments Act, 1881 deals with the laws relating to (1) Promissory Note (2) Bill of exchange (3) Cheques. In India, the instruments of exchange were in use from medieval times and the paupers representing money were introduced in this country by Mohammedan ruler in early part of the fourteenth century. The Negotiable instruments law as prevalent in England was applied by the courts in India when any dispute relating to such instruments arose between Europeans¹.

The word “negotiable” means “transferable from one person to another in return for consideration”, however, the word “instrument” means ‘a written document by virtue of which a right is created in favour of some person’. Thus, every document which entitles a person to a sum of money and which is transferable by delivery, is permitted to be called a “negotiable instrument”. The term “negotiable instrument”, as such, has not been defined in the Negotiable Instruments Act, 1881, but Section 13 of the Negotiable Instruments Act, 1881 states that, “a negotiable instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer²”.

In India, Section 6 of Negotiable Instruments Act, 1881 and the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act of 2002 states that a “Cheque” is ‘a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form’. The provision dealing with dishonour is cheque is S. 138 of NIA.

In pioneering technology, the two methods of payment are NEFT (National Electronic Fund Transfer) and RTGS (Real Time Gross Settlement). Law dealing with these payments is the Payment & Settlement Systems Act, 2007. Section 25 of the Payment & Settlement Systems Act, 2007, deals with cases relating to dishonour of electronic transfers. Section 25(5) of the Payment & Settlement Systems Act, 2007 provides that, the provisions of Chapter XVII of the Negotiable Instruments Act, 1881 shall apply to cases relating to dishonour of electronic funds transfer.

This work analyse the cause for rising litigation in Dishonour of cheque and suggestive remedies for the issue and handling of issue by other countries globally.

¹ Government of India, Law commission of India, Report No. 213.

² S. 13, Negotiable Instruments Act, 1881

RESEARCH METHODOLOGY

The researchers adopted doctrinal method of research in this work. To construct this research, the researcher had collected secondary data from legislation of Negotiable Instruments Act, 1881 and amendments in such legislation and various other Articles, Journals, Books, web sources. The researcher further referred various articles published in reputed journals to update the research. They also examined the cause for rising litigations in dishonour of cheques and dishonour of electronic forms.

OBJECTIVE OF STUDY

1. To analyse dishonour of cheque under S.138 of Negotiable Instruments Act, 1881
2. Essentials of cheque
3. Causes for rising litigation in Dishonour of cheque
4. Alternative remedies for litigation

REVIEW OF LITERATURE

1. S.P. Tyagi's Commentary on Negotiable Instruments Act, 1881, 4th Edition 2022, Vinod Publications (P) Ltd.,

This Book helps the researchers to analyse the position of Dishonour of Cheques under Negotiable Instruments Act, 1881. It also covers the topic of E-banking which aided researchers to explore the modern technological aspect to deal with the current research topic.

2. Bhashyam & Adiga's The Negotiable Instruments Act, revised by Justice Ranganath Misra, Former Chief Justice of India, 17th Edition 2003 Reprint with Updater 2006, Bharath Law House, New Delhi

This Book was revised and updated by Justice Ranganath Misra, Former Chief Justice of India. It helped the researchers to deeply analyse about the usage of cheques among the business community and their shortcomings. This book awakes the researchers about the amendments.

3. S.N. Gupta's Dishonour of Cheques, 5th Edition, 2006, Universal Law Publishing co.,

This book enhances the researchers knowledge by critically analysing Dishonour of Cheques. It also deals with civil and criminal liability of Dishonour of Cheque along with the amendments of this NI Act. This book is helpful for the researchers to analyse the cause for litigation.

RESEARCH QUESTION

1. What is the actual cause for staggering increase of litigation in Dishonour of cheques?
2. What could be the alternative to the use of cheques?
3. What could be the alternative remedies for criminal litigation in order to tail off the dispute?

HISTORY OF DEVELOPMENT OF CHEQUES

The use of cheque indirectly stimulated on the Act of 1708 which banned partnership firms having more than six partners and corporations, except the Bank of England from making the issue of Bank notes. This became a push back commercial system where the banking firms concentrated on the development of cheques. During the eighteenth century there was an increased use of cheque system and the bankers started printing cheques to issue to their customers. Since then there is no substitutional replacement of cheque system. The cheque is, in most expensive way used in both developing and the developed economy. In Indian context the cheques are officially issues. During present days due to growth in internet and technological innovations the system of electronic cheques are followed both in India and abroad though there is also prevailing the manual method of cheque system in economy.

However, at present, we find that the cheques as well as the cheques in electronic forms have become popular in international trade and are playing an important role in the monetary system of all the countries. A study of the banking law involves a study of the development of cheque as a bill of exchange and also the liability of the banks as collecting bankers and as paying bankers. The drawing, collecting and paying of cheques and the various implications and legal problems resulting therefrom have given birth to the Banking law.

In England the banking development has also undergone through the present day of technology. Their banks deal also deal with the electronic cheques and electronic transfers in their banking process. In a recent case of *Lloyds Bank PLC Vs Independent Insurance Co., Ltd.*,³ in the matter of electronic transfer the payment was made under mistake of fact. The customer instructed bank to make transfer as soon as possible. The bank agreed

³ *Lloyds Bank PLC Vs Independent Insurance Co., Ltd.*, (2000) 1 QB 110 (CA)

sufficient to clearance of incoming cheques. The bank mistakably believed the cheque was cleared. The transfer discharged the debt owed by customer to payee. The court independently ordered the restitution in favour of bank.

LEGAL PRESPECTIVE

Characteristics of Cheque

According to Section 5 and 6 of the Indian Negotiable Instruments Act, 1881, Cheques are regarded as negotiable. As study of cheques, thus requires a study of the Negotiable instrument. A number of definitions have been given of the Negotiable instrument and Wills has defined a negotiable instrument as under:

Negotiable instrument is one the property in which is acquired by anyone who takes it Bonafide and for value, nothing withstanding any defects of title in the person from whom he took it from which it follows that and instruments cannot be negotiable unless it is such and in such a state that the true owner can transfer the contract or engagement contain therein by simple delivery of the instrument. Another important definition of Negotiable Instrument is that the instrument must be complete at the time of transfer. When the person is not the true owner then he shall not give to another. Thus, a thief transferring a stolen thing for a price to another can still be claimed by its true owner even though price has been paid for it, without the knowledge of theft. There are exceptions to this general rule of which a negotiable instrument is one.

In the matter of *Sher Singh Vs. Vijay Kumar*,⁴ reported in AIR 1980 P & H page 270 petitioner was directed by the court as per Order 20, Rule 14 of Civil Procedure Code to deposit a specified amount on or before the specified date with the court. On that date a petitioner deposited a cheque for the amount. The cheque was presented to the drawee bank and the proceeds were credited to a Government account the next day.

The court further held that the deposit was a valid tender made in time. According to the observation of the court payment by cheque was equivalent to cash payment unless the cheque is dishonoured on proper presentment.

Truncated cheque

The truncated cheque is a cheque the presentment of which to the drawee bank for payment is truncated which means it is shortened by communication of its essential details by means of electronics instead of physical presentment of the paper cheque itself. The truncated presentment is limited to Clearing Houses managed or recognised by Reserve Bank of India. Moreover the electronic image of the front side as well as back side is also to be transmitted. The drawee bank can check and verify the regularity of any endorsement on such truncated cheque.

Dishonour of Cheque

The Section 138 of the Act is *intra vires* and not violative of Article 14 or 21 of the Constitution.

Section 138 of the Act does not punish every dishonour of cheque. It must be a cheque for the discharge of the whole of any part of any debt or other liability and the cheque is to be drawn upon a bank. This provisions has to be introduced as in business transaction issuance of cheque to discharge a debt of other liability is a common transaction and it has also been discovered that people do not issue checks that bounce when presented to the bank in order to avoid instant penalties. The law may, therefore, be deemed as a promissory note basically differ from a cheque and only a cheque out of possible bills of exchange have been chosen to come under the purview of Section 138. This law has been necessitated because of the malpractice prevalent in our society. Mere taking of loan is not made punishable by Section 138 of the Negotiable Instruments Act. It is an act of issuing cheque for the purpose of discharging the debt or liability for which they may be punishable only for certain circumstances and after following certain procedure. It may not, therefore, be stated that the liberty of a person was being curtailed by any arbitrary procedure or that such a provision was violative of Article 21 of the Constitution⁵.

A Division Bench of Bombay High court has also held that there is nothing legally or morally wrong or constitutional anathema in such an embargo as provided in Section 140 and therefore, the court held that Section 140 and therefore, the court held that Section 138 to 140 of the Negotiable Instruments Act are constitutionally valid⁶.

Notice

The purpose of notice is to safeguard the honest drawer and to offer the cheque drawer an opportunity to correct his omission. In order to file a complaint under Section 138 of the Act, the notice of demand in Clause (b) of the proviso to Section 138 must be served. In the present appeals there is no dispute that notices were in writing and these were sent within fifteen days of receipt of information by the appellant bank regarding return of cheques as unpaid. Therefore, only question to be examined whether in the notice there was a demand of payment⁷.

The object of issuing notice indicating the factum of dishonour of the cheque is to give an opportunity to the drawer to make the payment within 15 days, so that it will not be necessary for the payee to proceed against in any criminal action, even though the bank dishonoured the cheque⁸.

⁴ Sher Singh Vs. Vijay Kumar, AIR 1980 P & H page 270

⁵ M/s. Rajinder Steels Ltd., Vs Union Of India, 2000 Cri LJ 625 (Delhi) DB At p. 637

⁶ Mayuri Pulse Mills Vs Union of India, 1995 (1) Crimes 226: 1995 AIHC 5588

⁷ Central Bank of India Vs M/s. Saxons Farms, 1999 Cri LJ 4571

⁸ Rajnees Aggarwal Vs Amit J.Bhalla, (2001) 1 SCC 631.

According to the law, the notice's demand must relate to the "said amount of money." The phrase "payment of any amount of money," which appears in the main body of Section 138 of the Act, indicates that, even though the notice as contemplated may include demands for compensation, costs, interest, etc., it must be proven that the cheque was drawn with the intention of paying off all or a portion of any debt or liability. The drawer of the cheque stands absolved from his liability under Section 138 of the Act if he makes the payment of the amount covered by the cheque of which he was the drawer within 15 days from the date of receipt of notice or before the complaint is filed⁹.

The purpose of giving notice to the other party is simply to ensure that no man is condemned unheard. The court should ensure that the rule of *audi alteram partem* is observed. It is not a fetish or an empty ritual¹⁰.

Modes of Dishonour

(a) Refer to Drawer

Electronics Trade and Technology Development Corporation Ltd., Secunderabad case¹¹. It would amount to dishonour of the cheque within the meaning of Section 138 when the cheque is returned by the bank with an endorsement "refer to drawer"

When the cheque was returned with endorsement "refer to drawer" then it could mean many reasons including reason of insufficiency of funds. It is for complainant to prove that the said endorsement meant that there was insufficient fund by examining some official of the bank. As no evidence was adduced in that regard by the complainant, hence no offence was held to be proved¹².

(b) Drawer's signature is incomplete

Bouncing of cheque with remarks drawer's signature incomplete would also attract offence under Section 138 of the Negotiable Instruments Act¹³.

(c) Account closed

From Section 138, it is apparent that

- (i) Cheque should be drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of "that account",
- (ii) The cheque should be returned by the bank unpaid either because;
 - (a) The amount of money standing to the credit of that account is insufficient to honour the cheque, or
 - (b) It exceeds the amount arranged to be paid from the account by a person with the bank;
 - (c) In such a situation, such person shall be deemed to have committed an offence.

(d) Issuance of instructions for stoppage of payment and stamped

Once the cheque has been drawn and issued to the payee and the payee has presented the cheque and thereafter if any instructions are issued to the bank for non-payment and the cheques returned to the payee with such an endorsement, which amounts to dishonour of cheque and it comes within the meaning of Section 138 of the Negotiable Instruments Act¹⁴.

(e) Exceeds arrangements

Where there is no overdraft arrangement and the cheque presented exceeds the drawing limit allowed to the customer, the banker ordinarily will dishonour the cheque. Of course, if the cheque is honoured without having sufficient balance in the account, the transaction amounts to a loan and the customer is bound to make good the loan to the bank¹⁵.

(f) Blank Cheque

Based on interpretation of Section 20, 87, and 139 of the Act, when a blank cheque is handed over to the payee and payee fills up the same, it cannot be termed to be a case of material alteration. In such case there is an implied consent by the signatory to fill the cheque. The onus of proof would still be on the accused to prove to the contrary.

(g) Blank Cheque, use of different ink

⁹ K.R. Indira Vs Dr. G. Adinarayana, 2003 (4) Crimes 425.

¹⁰ Geetha Panicker Vs Legi Easo Methew, 2005 (1) Bankmann 2 (Kerala)

¹¹ Electronics Trade and Technology Development Corporation Ltd., Secunderabad Vs Indian Technologists and Engineers (Electronics) Pvt Ltd., JT 1996 SC 643

¹² A.C. Raj Vs M. Rajan Puha, 1997 Cri LJ 1939 (1941) Ker

¹³ Vinod Tanna Vs Zaheer Siddique, 2002 (1) Crimes 104 Bom.

¹⁴ Supra 10

¹⁵ State Bank of India Vs Vathi Samba, AIR 1988 Ori. 50

Guahati High court held that When it is proved on record, by admission or otherwise, that the payee filled his name on the cheque in different ink, and during the course of trial complainant failed to establish the debt or liability accruing from the accused to his favour, acquittal would be proper¹⁶.

There is a line of judicial pronouncements of the Supreme court saying that in case of an averment of blank cheque, the benefit of presumptions would still be available to the complainant payee.

(h) Deemed Service of notice

It is well settled that a notice refused to be accepted by the addressee can be presumed to have been served on him¹⁷.

Punishment for Dishonour

Section 138 of the Negotiable Instruments Act, 1881, as inserted by the Banking, Public Financial Instruments and Negotiable Instruments Laws (Amendment) Act, 1988 (66 of 1988) relates to dishonour of cheque for insufficiency of funds in the account. This section was amended by the Negotiable Instruments (Amendment and Miscellaneous) Act of 2002 by providing the punishment for dishonour of cheques up to two years and upto twice the cheque amount and the High court of Madras in *Babu Xavier Vs Lalchand*,¹⁸ and the High court of Punjab and Haryana in *Gulshan Rai Vs. Anil Kumar Sawhney*,¹⁹ have held that the cheques in dispute being post-dated cheques, the provisions of section 138 of the Act were not attracted and, if any admitted facts arise out of criminal complaints doesn't amounts to an offence.

Position of Dishonour of cheque in other countries

The issue of non-acceptance of cheques differs in all countries. Here is a brief summary:

The United States

In America, the law regarding a dishonour of cheque is different from state to state. In case of a bounced cheque, where there are not sufficient funds in the drawer's account, the holder can take action for the covered sum and related costs. Some jurisdictions also include Bad Cheque Restitution Programs where the recipient can use the office of the local district attorney to obtain the funds.

In the case that a cheque is returned unpaid, the payee is entitled to demand payment in writing. If payment is not made, the payee may commence legal proceedings in order to recoup the sum sought, along with the cost of the legal proceedings, and any other losses incurred. There are differences among state laws; for example, California permits tripling the amount in question (\$500 maximum – \$1500 maximum without containing an amount that is illegal as well as unacceptable). Furthermore, if a check bounces because of insufficient funds, the state will impose penalties which will include fines or even jail time. This is usually so when the amount is considerable or when the person clearly wrote a fraudulent check.

The United Kingdom

In the UK, money orders, cashier's cheque and personal cheque are regulated by the Bills of Exchange Act 1882. In any event of a dishonoured cheque, the aggrieved party can award a judgment in default against the cheque drawee. Claims raised in response to the enforcement of a dishonoured cheque are restricted to fraud, economic duress, false statement, mental incapacity and failure of consideration.

In the United Kingdom, in the event that a cheque is not honored, the drawer of the cheque, that is, the one who issued it is liable to the payee that is, the one who received it for any damages sustained. The provisions of the Acts apply as well. The Act also makes provisions for the recovery of interest by the payee who is the drawer of the dishonoured bill of exchange as from the date of dishonour. In the case of larger cheques, dishonouring can lead to additional costs and damage to one's reputation.

France

With regard to GCD laws, they are much softer in France than they are in the UK or US. The payee may also file a civil suit seeking recovery of damages from the drawer but there is less inclination to press criminal charges unless fraud is proven.

French legal system tends to be more lenient. A Returned Cheque can be re-presented within thirty days. Once again, if the payment is still not received, the payee may make a request demanding it. Still, in case the obligor does not respond, the payee is entitled to bring an action in a civil court. There are some measures French banks may take regarding the behaviour of the drawee and that may include, for instance, prohibition of issuance of cheques.

Germany

In Germany dishonoured cheques are considered in the lines of that of France, in regard to remedies available being civil primarily. In the absence of perverse intentions, prosecution is uncommon.

Germany regulated the Payment Order system through the Payment Orders Law (*Scheckgesetz*). They can issue a demand for payment and if the sum is unpaid, further steps can be taken in civil action. In other countries, for instance, the USA and the UK, there are very few – if any, cases of criminal

¹⁶ Nitu Kalita Vs Dr. Hiren Gogoi, 2021 0 Supreme 55 (gua)

¹⁷ Harcharan Singh Vs Sivam, 1981 (2) SCC 535.

¹⁸ Babu Xavier Vs Lalchand, 1990 TLNJ (Cri) 121.

¹⁹ Gulshan Rai Vs Anil Kumar Sawhney, (1992) (2) Crimes 810

prosecution of people for write-offs of cheques. Cos appreciable goes to cry for help in civil actions, where one might have fines and penalty interest to pay for the encourager.

THE CAUSES FOR RISING LITIGATION IN SECTION 138 OF NEGOTIABLE INSTRUMENTS ACT

1. Increased Use of Cheques in Business Transactions

Cheques are widely used in commercial transactions, especially in India. The heavy reliance on cheques for payments increases the chances of dishonour due to insufficient funds, stop payment instructions, or signature mismatch. This naturally leads to a higher number of disputes under Section 138.

2. Easy Filing Process

Filing a complaint under Section 138 is relatively easy compared to other civil suits. The process does not require a detailed investigation, making it a convenient option for creditors to pursue legal recourse in case of a dishonoured cheque.

3. Lack of Immediate Deterrent Effect

Although Section 138 provides for both imprisonment and fine, the implementation of punitive measures is often delayed due to the overburdened court system. This reduces the deterrent effect on offenders, leading to repeated dishonoring of cheques.

4. Delay in Disposal of Cases

Indian courts, especially lower courts, face a significant backlog of cases. Section 138 cases often suffer from delays, which prolongs the resolution and encourages the filing of more cases as there is no quick remedy.

5. Inadequate Negotiation or Mediation Mechanisms

There is often a lack of adequate negotiation or mediation between parties when a cheque bounces. Rather than opting for an alternative dispute resolution (ADR) mechanism, parties rush to litigation, resulting in an increase in cases under Section 138.

6. Misuse of Section 138

Some parties misuse Section 138 as a tool for coercion or as a pressure tactic to recover money, even in cases where there may be genuine reasons for the cheque's dishonour. This misuse contributes to the growing litigation burden.

7. Poor Financial Discipline

In some cases, poor financial discipline and unethical practices in business transactions lead to cheque bouncing. Issuers sometimes knowingly issue cheques without maintaining sufficient balance, confident that the legal process will be slow.

8. Lack of Awareness

Many people, especially in small businesses and unorganized sectors, are not fully aware of the legal consequences of issuing a cheque that may bounce. This ignorance leads to an increased incidence of cheque dishonoring, further adding to the litigation burden.

9. Changing Economic Conditions

Economic downturns, inflation, and liquidity crises can lead to a higher number of defaults in payments, which in turn results in more cheque bounces and litigation under Section.

10. Nominal Penalties in Some Cases

In certain instances, courts may impose nominal penalties that do not effectively deter repeated offenses. This emboldens habitual offenders to continue issuing cheques without sufficient funds.

ALTERNATIVE MEASURES TO USE OF CHEQUE

Electronic payments, frequently called as e-payments, constitute a abecedarian aspect of ultramodern financial deals, enabling individuals and businesses to execute fiscal deals and settle bills seamlessly through online platforms or electronic mediums without depending on physical cheques or cash. It is an emerging need to examine the role of technology in detecting and preventing cheque bouncing, as well as the potential benefits of implementing electronic payment systems to mitigate the risks associated with paper cheques. The Bharath Interface for Money (BHIM) app and the Unified Payments Interface (UPI) has created in revolution of digital payments in India. It has its own pros and cons. Transactions using Net banking with the help of OTP (One Time Password) is reliable, easy and more authenticated which might serve as an alternative to use of cheques for financial transaction. The need for collaboration between government agencies, financial institutions, and legal professionals to develop comprehensive solutions that protect the integrity of the financial system and promote trust in payment transactions is significant.

ALTERNATIVE REMEDIES TO CRIMINAL LITIGATION UNDER SECTION 138

Given the challenges of litigating under Section 138, various alternative remedies are available to an aggrieved party. These remedies may offer quicker or more effective solutions depending on the nature of the dispute.

1. CIVIL SUIT FOR RECOVERY (ORDER XXXVII CPC)

Instead of pursuing criminal litigation, the aggrieved party can file a civil suit for recovery of the cheque amount. The Civil Procedure Code, 1908, provides the option of a summary suit under Order XXXVII, which is ideal for cases involving negotiable instruments like cheques.

ADVANTAGES:

Monetary Focus: Civil suits focus on recovering the amount due, not on punishing the drawer.

Attachment of Assets: The plaintiff can seek attachment of the defendant's property, enhancing the chances of recovery. The court can order the attachment of the defendant's property, improving the chances of recovery.

Speed: Summary suits for recovery can be faster under Order XXXVII of the Civil Procedure Code, which provides a streamlined procedure for cases involving promissory notes and cheques.

In a summary suit, the court proceeds faster as the defendant's ability to defend is restricted unless leave is granted.

Difficulty in execution: Even after securing a favourable judgment, enforcing the payment or fine can be difficult if the drawer lacks assets.

2. ARBITRATION

If the parties have agreed to an arbitration clause in their contract, disputes relating to dishonoured cheques can be resolved through arbitration under the Arbitration and Conciliation Act, 1996. Arbitration is a dispute resolution mechanism.

ADVANTAGES:

Quicker resolution: Arbitration is generally faster than court litigation.

Enforceable award: An arbitral award is legally enforceable and is equivalent to a court decree.

Confidentiality: Arbitration proceedings are confidential, preserving business relationships.

3. MEDIATION AND CONCILIATION

Mediation and conciliation are alternative dispute resolution methods that allow the parties to resolve disputes amicably. A mediator helps both parties negotiate a mutually agreeable settlement, which can be faster and less adversarial than court proceedings.

ADVANTAGES:

Preservation of Relationships: Mediation fosters cooperation and helps maintain business relationships.

Quicker Resolutions: Since mediation is less formal than court proceedings, it is typically quicker.

5. FILING A COMPLAINT UNDER CONSUMER PROTECTION ACT, 2019

If the dishonour of the cheque relates to a consumer transaction, the aggrieved party can file a complaint under the Consumer Protection Act, 2019.

Consumer Forum: The matter can be taken to a Consumer Disputes Redressal Forum, which handles cases quickly and in a less formal environment.

Compensation: The consumer forum can grant compensation and direct the drawer to pay the value of the cheque along with damages for the inconvenience caused.

6. NEGOTIATION AND SETTLEMENTS

Out of court Settlements: In many cases, parties negotiate an out of court settlement after the cheque is dishonoured, especially where a longstanding business relationship is involved.

Prelitigation Mediation: The parties can also engage in prelitigation mediation, which has been encouraged in several jurisdictions to avoid clogging the courts with cases that can be resolved through negotiation.

CONCLUSION

The increasing litigation in the Dishonour of cheques under section 138 of Negotiable instruments act, 1881 indicates the urgency of seeking alternative solutions and the transition toward electronic methods of making payment in order to circumvent the problems inherent in the use of paper cheques. It is important to explore arbitration, mediation, civil suits and consumer protection forums for faster and better resolution but emboldening

financial knowledge. Equally, there is a need for joint efforts by government bodies, financial organisations and legal practitioners on how to formulate measures that safeguard the stability of the financial system while also enhancing confidence in payment operations.

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