

STEPS IN 138 MATTER (CHEQUE BOUNCE)

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Careful reading of the Section 138 of the Negotiable Instruments Act, 1881 provides the steps that is required to be followed with regard to the dishonor of the cheque for insufficiency, etc., of funds in the account.

Please find a note of the steps involved, with respect to Section 138 of the Negotiable Instrument Act, 1881:

- ✓ The cheque must have been presented to the Drawee-Bank within 6 months from the date on which it is drawn, or within the period of its validity, whichever is earlier.
- ✓ Within 30 days of receipt of information from the Bank about dishonour of the cheque, the payee should have made a written demand on the drawer for payment of the amount of money represented by the cheque.
- ✓ The Drawer gets 15 days from the receipt of notice to make the payment to avoid liability.
- ✓ A written Complaint should be made to the Metropolitan or a first class judicial magistrate by the payee within 1 month from the date on the expiry of 15 days time given to the drawer to discharge his liability.
- ✓ The Complaint in writing is to be made by the Payee or holder in due course of the cheque. [The Supreme Court in (1998) 1 SCC 687 held that when the Complainant is a body corporate, it is the de jure Complainant and it is necessary to associate a de facto (real person) Complainant to represent the former in Court proceedings and has to be examined as the Complainant.]
- ✓ The Hon'ble Court will take cognizance of the Complaint on the basis of the contents of the complaint and proceeds further to examine the Complainant.

- ✓ The Hon'ble Court will issue Notice/Summons to the accused.
- ✓ The Hon'ble Court will examine the Complainant and the Accused [Either party to lead evidence with original documents to prove their case].
- ✓ The Hon'ble Court on hearing the parties will pass final order/judgment.



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