

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.2957 OF 2015

Shri Swami Samartha Gramin Bigar
Sheti Sahakari Pat Sanstha Ltd., Sonai ... APPLICANT

VERSUS

Balasaheb Madhav Phatke ... RESPONDENT

.....
Shri A.C. Darandale, Advocate for applicant
Shri R.P. Phatake, advocate for respondent
.....

CORAM: M.T. JOSHI, J.

DATED: 13th October, 2015.

ORAL ORDER :

1. Heard. The learned counsel for the applicant files on record true copy of the roznama maintained by the learned trial Court, in which the impugned order is passed. The same is accepted and marked as "X" for the purpose of identification.

2. The complaint of the present applicant against the respondent for the offence punishable under Section 138 of the

Negotiable Instruments Act was dismissed in default. The record would show that the respondent on many occasions remained absent and, therefore, non-bailable warrants from time to time were required to be issued. Even he was not served some time by the police. The case with such speed-breakers could ultimately reach to recording statement under Section 313 of the Criminal Procedure Code. Again the respondent/ accused remained absent and, therefore, again the exercise of issuing non-bailable warrant was adopted. The complainant/ applicant, however, failed to pay process fee and remained absent, and on that day the complaint was dismissed in default. Considering this long drawn dispute, leave to file appeal is hereby granted. Criminal Application stands disposed of.

3. The appeal be registered as per the due procedure of law.

4. Upon registration of the appeal, the appeal is admitted.

5. Heard both sides in the appeal. For the reasons already forwarded, the order passed by the learned Judicial Magistrate, First Class, Court No.3, Ahmednagar below Exh.1 in S.T.C. No.4537/2008 is hereby set aside. The complaint is

restored to the file of the learned Judicial Magistrate, First Class, Court No.3, Ahmednagar. Both the sides are directed to appear before the learned Judicial Magistrate, First Class, Ahmednagar on 20th November 2015. Thereafter, the learned Judicial Magistrate, First Class to proceed with the complaint as per the due procedure of law. Criminal Appeal stands disposed of.

(M.T. JOSHI, J.)

fmp/cr2957.15