

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPLICATION NO.4982 OF 2014
AND
CRIMINAL APPLICATION NO.4981 OF 2014

Shivshakti Co-operative Sugar
Factory Ltd., Tandulwadi, Tq.
Washi, Dist. Osmanabad, Through
Vitthal Adinathrao Chede
Age 31 years, Occ. Service,
r/o. Washi, Tq. Washi,
Dist. Osmanabad ..Applicant

Versus

1] M/s. Global Infrastructure
and Technology, 929, Mantri
House, F.C. Road, Pune,
Dist. Pune, through Manager,
Amit s/o. Ashokrao Thepade
and ors. ..Respondents

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Mr.S.B.Chaudhari, advocate for applicant
Mr.A.C.Darandale, advocate for respondent no.5

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CORAM : M.T. JOSHI, J.
DATE : NOVEMBER 23, 2015

PER COURT :

Heard

2] Aggrieved by dismissal in default of the
complaint filed for the offence punishable under

Section 138 of the Negotiable Instruments Act, the applicant/original complainant wants to prefer an appeal. Therefore, delay of 274 days caused in filing the application for grant of leave to file the appeal, is sought to be condoned.

3] The contentions raised in the application would show that the applicant had filed another complaint in the same court and when that complaint was dismissed, he got knowledge regarding present complaint that the same was also dismissed in default. Further, there was financial crisis and the file was kept before the managing committee of the applicant/complainant i.e. Co-operative Sugar Factory and as such, delay has occurred, which is sought to be condoned.

4] Learned counsel for respondent no.5 opposes the application. He submits that the record would show that on some occasions the complainant or his advocate remained present in the trial court and

on some occasions they remained absent and therefore, no proper explanation for condonation of delay is given. He relies on the ratio laid down in the cases of (i) *Orion Media Pvt. Ltd. Vs. Bhaskar Bapulal Shah and anr.*, 2009(1)Bom. C.R. (Cri.) 177; and (ii) *Sonam Finance Lease Co. Pvt. Ltd. Vs. Vasantsingh Shankar Narayansingh and anr.*, 2008(2)Bom C.R. (Cri.) 315.

5] Upon hearing both sides, it is clear that the complainant/applicant is a co-operative sugar factory and therefore, there is no personal involvement of individual in the matter. The record would show that the case was transferred from one court to another at different station. The advocate for complainant had filed applications for issuance of summons or non-bailable warrant to the respondent/accused from time to time. However, the summons or non-bailable warrant could not be served and the

matter was prolonged again for taking steps after steps. On some occasions advocate for complainant was negligent, which, ultimately, resulted in dismissal of the complaint in default.

6] The ratio laid down in the cases cited supra, upon which learned counsel for respondent no.5 has placed reliance, would show that on facts, it was held that sufficient cause was not made for condonation of delay in those cases. Further, in the case of *Sonam Finance (cited supra)*, statement was made against the record that only on one date, the complainant had remained absent.

7] In the situation, in my view, in the present case, sufficient cause is made out for condonation of delay. In the circumstances, delay caused in filing the application for grant of leave to file appeal, is hereby condoned. Criminal Application No.4982 of 2014 is allowed and disposed of.

8] Upon condonation of delay, the application for grant of leave to file appeal, is taken up for hearing.

9] Heard.

10] For the reasons stated in the application, leave to file appeal is hereby granted. Criminal Application No.4981 of 2014 is hereby allowed and disposed of.

11] The appeal be registered according to due procedure of law.

12] Appeal is admitted. By consent of the parties, the appeal is taken up for hearing.

13] For the reasons forwarded herein above, the appeal is also allowed. The impugned order passed

by learned Judicial Magistrate F.C., Washi, is hereby set aside. Instead, the complaint is restored to the file of learned Judicial Magistrate F.C.

14] Learned Judicial Magistrate F.C., Washi, is directed to proceed with the complaint in accordance with law. Both sides are directed to appear before learned Judicial Magistrate F.C., Washi, on 20th January, 2016.

15] The appeal is disposed of accordingly. No order as to costs

[M.T. JOSHI, J.]