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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 266 of 2015.
ALONG WITH
CRIMINAL APPEAL No. 1102 of 2015

Writer Safeguard Pvt Ltd ..Applicant.
Through: its Authorized signatory, (Appellant)
Abhijit Anil Magar

Versus

Sachin Ambadas Nanavre & Anr ..Respondents.

Mr Ashok B. Tajne, Advocate for the Appellant/Applicant.
Mrs Anamika Malhotra, APP for the State.
Mr Ravi Girish Shinde for respondent no.1.

CORAM : A.R.JOSHI,J
DATE : 30th November, 2015

P.C. :

1) Heard rival arguments on this application for leave to file appeal challenging the acquittal of respondent no. 1 in the matter of offence punishable under section 138 of the Negotiable Instruments Act (for short "the N.I. Act). The

acquittal of respondent no.1 is on the order dated 10th April,2015 passed by JMFC, Pune in Summary Criminal Case No. 13904/2013. The said order was passed on default of the complainant and his advocate to remain present when the matter was fixed for recording evidence. As such, admittedly, the acquittal of respondent no.1-original accused is not on the merits of the matter.

2) Considering the above factual position, earlier this Court has given directions that the entire matter shall be heard and disposed of at the admission stage itself as it involves very small issue.

3) A complaint under section 138 of the N.I. Act was lodged against respondent no.1 in the year 2013 for dishonour of cheque of Rs.2,05,000/-. Process was issued against respondent no.1. Various steps were taken by the present applicant/complainant to serve the accused. Accordingly, the accused appeared before the trial Court and furnished surety. Thereafter, plea of the accused was recorded and matter was kept for recording of the evidence. It was so dismissed on

10.4.2015 for want of presence of the complainant and his advocate.

4) The present application is strongly opposed by respondent no.1 mentioning that there was nothing brought before the Court that there was sufficient reason for the applicant and his advocate not to remain present before the trial Court.

5) Admittedly, it is a matter of dishonour of cheque and in fact, such types of matters are required to be disposed of within six months. However, unfortunate situation, not only in this matter but in a number of such matters, is that the matters are pending for years together and at times lethargy is expressed by the litigants and many times the follow up with their lawyers is not possible. This situation is also at times get aggravated due to the transfer of the cases from one Judicial Officer to another Judicial Officer as happened in the present matter. On such transfer again the question arose as to the knowledge of the parties regarding actual date of hearing. In the present case, it is apparent that the present matter was

transferred to three courts. Firstly, it was before other Judicial Magistrate and when it came before the third court, it was dismissed and, admittedly, there is no decision in the matter on merits.

6) Considering the above circumstances, in the considered view of this Court, the present matter i.e. the dispute between the parties is required to be decided on merits when specifically it is a matter of dishonour of cheque of Rs.2,05,000/-.

7) In the result, the present application for leave to file appeal is allowed. The appeal accordingly be numbered immediately and same is also disposed of by the following order;

ORDER

(a) Criminal Appeal No. 1102/2015 is admitted and also allowed;

(b) The impugned order dated 10th April,2015 passed by J.M.F.C.Pune in 13904/2013 is set aside;

(c) Both parties are directed to appear before the concerned trial Court on 18.1.2016. From that date the matter shall proceed before the concerned trial Court, in accordance

with law. Needless to mention that the trial Court shall give proper opportunity to both the parties to produce their evidence, if any and dispose of the matter, as expeditiously as possible, in accordance with law and preferably within a period of three months therefrom.

(A.R.JOSHI, J.)