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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION No. 347 of 2013.
ALONG WITH
CRIMINAL APPLICATION No. 348 of 2013.

LIC Housing Finance Limited ..Applicant.
Versus.
M/s Rapid Developers & Ors ..Respondents.

Mr Usha Shrivastav a/with Nupur Awasthi i/by M/s Consulta
Juris for the Applicant.
Mrs Anamika Malhotra, APP for the State in ALP No. 347/2013.
Mr A.R. Patil, APP for the State in ALP No. 348/2013.

CORAM : A.R.JOSHI, J
DATE : 20th JULY, 2015

PC. :

1) Heard learned counsel for the applicant in both the matters. The respondents are already served. The affidavit to that effect is filed. Respondent No.1 is a partnership firm and respondent No. 2 and 3 are its partners. Acknowledgment bearing signature of one of the partners for and on behalf of respondent No.1 and the acknowledgment of respondent No.3 are filed on record. Today, none present for the respondents in both the matters.

2) Both these applications are for leave to appeal challenging the acquittal of the respondents in the matter of offence punishable u/s 138 of Negotiable Instruments Act. According to the case of the applicant/appellant, LIC Housing Finance Ltd, had advanced the loan amount of Rs. 1 Crore to accused No.1 / partnership firm. Towards repayment of the loan two cheques were given to the applicant, one for Rs.50 lakhs and odd and another for Rs.26 lakhs and odd. During the trial, before the Trial Court, the original documents were not produced, as, apparently they were not available and application for leading secondary evidence was made. It was allowed on directions to the original complainant to pay costs of Rs.1000/- in each complaint. It appears that the cost of Rs.1000/- were not paid and as such the secondary evidence was not allowed as held by the trial Court. On that premise, the trial Court came to the conclusion of failure of the complainant to produce any cheque or any other documents, such as demand notice and reply etc., and hence acquitted the respondents in both the matters.

3) It is argued on behalf of the applicant that the demand notice was received by the respondents and a reply was given to the

notice acknowledging the liability and giving of the cheque. Reply copy was also produced before the Court, but not in original. It is further stated that the complainant came to know regarding such conditional order of costs of Rs.1000/- much belatedly and as such could not comply the same in time.

4) Considering the above, in the opinion of this Court, there is a debatable issue involved in the matter which is required to be dealt with in detail at the time of final adjudication of the appeals and hence both the present applications for leave to appeal are allowed.

5) The respective applications be treated as respective appeals and necessary amendment to be carried out. Process u/s 390 of Cr.P.C. be issued against respondent Nos. 2 and 3 with directions to the Trial Court to release respondent Nos. 2 and 3 on bail in the sum of Rs.500/- each in both the matters. Call for R and P

Both the applications are disposed of.

(A.R.JOSHI, J.)