

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 690 OF 2014

M/s. Anand Manufacturing & Marketing Co. & ors. ... Applicants.

Versus

M/s. Kosak Engineering & Rubber Products. & anr. ... Respondents.

Mr. Omkar Mulekar h/f. Mr. Niranjana Mundargi, advocate for Applicants.

Mr. Kishor K. Malpathak, advocate for respondent No.1.

Ms. R.M. Gadhvi, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J

DATE : JULY 3, 2015

P.C.:

1 Heard the learned Counsel for the applicants and the learned Counsel for the respondent No. 1.

2 This is an application seeking relaxation of condition imposed by the 2nd Additional Sessions Judge, Thane dated 13/11/2014 at the time of admission of the appeal. The applicants herein are convicted for offence punishable under Section 138 of the Negotiable

Instruments Act in S.C.C. No. 5438 of 2009. The applicants herein have been directed to pay Rs. 5,50,000/- as compensation by Judicial Magistrate First Class, Vashi vide Judgment and order dated 1st October, 2014. At the time of admission of the appeal, the learned Sessions Court had directed the applicants to pay 50% of the total amount of compensation i.e. Rs. 2,75,000/- on or before the next date. The said order was challenged by the applicants before this court by filing present applicants on the ground that the order is exorbitant in nature and due to economic stringencies, the applicants were not able to pay the amount as directed till the scheduled date i.e. on 16/12/2014.

3 Notice was issued to the respondent No. 1 and was made returnable on 28/1/2015. This Court had stayed the operative order in respect of the payment of compensation for a period of 4 weeks or till the appearance of the respondent whichever is the earlier. It appears that the matter had not reached at the stage of hearing on the subsequent dates and no efforts were made by the learned Counsel to

get interim order extended or modified. The learned Counsel for the applicants submits that the amount of the disputed cheque is Rs. 3,25,000/- and paying Rs. 2,75,000/- at the time of admission of appeal would cause great prejudice to the defence of the accused. Hence, he seeks for relaxation of the condition.

4 The learned Counsel appearing for the respondent has vehemently opposed the grant of relief in favour of the applicants on the ground that the cheque for an amount of Rs. 3,25,000/- was issued in the year 2009 and since then, the applicants have not paid single farthing to the complainant.

5 Taking into consideration the fact that the appeal is pending hearing and the merits of the matter would be decided in the course of appeal, this Court is inclined to relax the condition to a limited extent and modify the order dated 13/11/2014, which would be without prejudice to the rights of the parties. The Court has taken into consideration the economic stringencies of the applicant. It is

made clear that the application has not been decided on merits and shall not cause any prejudice to the rights of the parties in the appeal.

6 Hence, following order is passed.

(i) The application is allowed.

(ii) The order dated 13/11/2014 is being modified as follows :

The applicants shall deposit Rs. 2,00,000/- in the Court of Additional Sessions Judge, Thane within 5 weeks from today.

(iii) The respondent would be at liberty to file an application for withdrawing the amount, subject to the rights of the parties.

7 The application is disposed of on the above terms.

(SMT. SADHANA S. JADHAV,J)