

IN THE HIGH COURT OF JUDICATURE AT BOMBAY**CRIMINAL APPELLATE JURISDICTION****CRIMINAL APPLICATION NO.605 OF 2013**

M/s. Modern Mills Ltd.

(Now known as Modern India Ltd.)

..Applicant.

versus

The State of Maharashtra and others

..Respondents.

.....

Mr. Sudeep Dasgupta for the Applicant.

Mrs. S.D. Shinde, Addl. P.P. for the State.

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CORAM : A.S. GADKARI, J.

9th July 2015.

P.C. :

By the present Application filed under Section 378 of the Criminal Procedure Code, the Applicant is seeking leave to file Appeal against the order dated 21st December, 2010. By the order dated 21st December, 2010 the learned Metropolitan Magistrate, 7th Court, Dadar, Mumbai was pleased to dismiss the complaint for want of prosecution. The said order is impugned herein. The record discloses that the complaint under Section 138 of the Negotiable Instruments Act was filed by the present Applicant on 31st May, 2003 in the Court of Metropolitan Magistrate, 7th Court, Dadar, Mumbai for the offence punishable under Section 138 of the Negotiable Instruments Act against the Respondents / original accused persons. By the impugned order dated 21st December, 2010 the said complaint came to be dismissed for want of prosecution. The learned Trial Court in the said order has observed that since the year 2008, none was present for and

on behalf of the Applicant / complainant, the case was pending since the year 2003 and inspite of granting sufficient opportunity to the complainant, the complainant failed to take any steps with a view to secure the presence of the accused persons. The Trial Court, therefore, dismissed the said complaint for want of prosecution.

2. Heard the learned counsel for the Applicant. The learned counsel for the Applicant submits that because of their advocate who did not inform about the progress of the said case, they lost track of the case and therefore the same was dismissed. The learned counsel drew my attention to the pleadings in the present Application, particularly paragraph Nos.3 and 4. It is pleaded that as the advocate who was appointed by the Applicant to represent them before the Trial Court did not intimate the progress of the case and the said advocate also lost track of the case, the said complaint was dismissed for want of prosecution. I am unable to accept the said contention for the simple reason that it was also the duty of the complainant to keep the track of their own case and the complainant cannot now raise a spacious plea thereby putting a burden on their advocate who was appearing before the Trial Court. This is so particularly in view of the fact that the Applicant is a company registered under the provisions of the Companies Act and has at its disposal sufficient number of staff to follow up the cases instituted by the Applicant.

3. Apart from the aforesaid facts, it is to be noted that the present Application was also dismissed for non-prosecution by the order dated 23rd March, 2015 by this Court. The same was restored today by passing a separate order in Criminal Application No.359 of 2015. This itself shows the carelessness of the complainant / Applicant in pursuing their own matters before various Courts.

4. In view of the above, I am not inclined to entertain the present Application. I further find that there is no infirmity in the order passed by the learned Trial Court either in law or on facts. The present Application is therefore, dismissed in limine.

(A.S. Gadkari, J.)