

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD.
APPELLATE SIDE JURISDICTION

CRIMINAL APPEAL NO. 247 OF 2016

SANJAY BHAUSAHEB BHAGAT
VERSUS
MUKTAI DAIRY PVT. LTD. AND ANOTHER

...
Advocate for Appellant : Mr. Rahul A. Tambe.
Advocate for Respondents : None.
...

CORAM : **INDIRA K. JAIN, J.**
DATE : 13th April, 2016.

ORDER:

. This appeal takes an exception to the order dated 20th November, 2012 passed by the learned Judicial Magistrate First Class, Newasa in S.T.C. No.809 of 2002 dismissing the complaint under Section 138 of the Negotiable Instruments Act.

2 Heard Mr. Rahul A. Tambe, learned counsel for Appellant. None for Respondents. Perused impugned order and certified copy of Roznama placed on record.

3 It appears from Roznama that complaint was filed in the year 2002. Plea was recorded on 6th April, 2005. Complainant filed affidavit in lieu of examination-in-chief on 8th April, 2012. Matter was listed for his cross-examination thereafter. On 15th November, 2010

matter was listed for final arguments.

4 Roznama shows that on 6th January, 2012 Trial Court passed order below Exhibit 1 and directed that trial be conducted *denovo*. In view of *denovo* trial case was again fixed for evidence of Complainant. He then filed his affidavit. Since Complainant remained absent complaint was dismissed on 20th November, 2012.

5 On perusal of impugned order it can be seen that complaint was dismissed for not taking steps. Roznama does not indicate what sort of steps were required to be taken by Complainant. Roznama in fact shows that on many dates Accused sought time and Complainant was not alone responsible for delaying the matter.

6 In this premise and to avoid denial of justice impugned order deserves to be set aside. Hence the following order –

ORDER

- I. Criminal Appeal No.247 of 2016 is allowed.
- II. Impugned order dated 20th November, 2012 passed by the learned Judicial Magistrate First Class, Newasa in S.T.C. No.809 of 2002 is set aside and

complaint is restored to the file of Trial Court with a direction to dispose of the same in accordance with the law.

III. Parties to appear before the Trial Court 26th April, 2016.

IV. No order to costs.

[INDIRA K. JAIN, J.]

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