

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO. 132 OF 2016
IN
CRIMINAL WRIT PETITION NO. 2152 OF 2014

Pushkaraj Enterprises	...	Petitioners
vs.		
Kundan Mehta Associates & Anr.	...	Respondents

Mr. P.V.Dube,,Advocate for the petitioners.
Ms. Negha Prashant h/f ALMT Legal for respondent No.1.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 10th June, 2016.

P.C.

This is an application seeking restoration of the Writ Petition No.2152 of 2014 which was dismissed for want of prosecution on 7.10.2014. The Writ Petition was restored to its original status on 5.12.2014. The matter was not prosecuted. By an order dated 14.10.2015, this Court had recorded the dates when the matter was not attended. It is pertinent to note that the spare copy was also not supplied despite the fact that notice was issued to the respondent on 13.2.2015. In addition to Court notice, private service was also permitted. The respondent had filed Vakalatnama on 8.6.2015. On 21.9.2015, none appeared for the petitioner . The copy of the petition along with annexures was not served upon the learned counsel for the respondent despite the fact that the

Vakalatnama was filed. In view of this, the Petition was dismissed for want of prosecution on 16.10.2015. On 22.2.2016, none appeared for the petitioner. This Court (Coram: Dr. Shalini Phansalkar Joshi) had therefore dismissed the application seeking restoration of the Writ Petition. It is clear from the records that the Writ Petition has been pending since 2014 without there being any progress.

2. The Hon'ble Apex Court in the case of **Indian Bank Association and others vs. Union of India & Ors. (Writ Petition (Civil) No.18 of 2013**, has given the following directions :-

“DIRECTIONS :

1) *Metropolitan Magistrate/Judicial Magistrate (MM/JM), on the day when the complaint under Section 138 of the Act is presented, shall scrutinize the complaint and, if the complaint is accompanied by the affidavit, and the affidavit and the documents, if any, are found to be in order, take cognizance and direct issuance of summons.*

2) *MM/JM should adopt a pragmatic and realistic approach while issuing summons. Summons must be properly addressed and sent by post as well as by e-mail address got from the complainant. Court, in appropriate cases, may take the assistance of the police or the nearby Court to serve notice to the accused. For notice of appearance, a short date be fixed. If the summons is received back un-served, immediate follow up action be taken.*

3) *Court may indicate in the summon that if the accused makes an application for compounding of offences at the first hearing of the case and, if such an application is made, Court may pass appropriate orders at the earliest.*

4) Court should direct the accused, when he appears to furnish a bail bond, to ensure his appearance during trial and ask him to take notice under Section 251 Cr.P.C. To enable him to enter his plea of defence and fix the case for defence evidence, unless an application is made by the accused under Section 145(2) for re-calling a witness for cross-examination.

5) The Court concerned must ensure that examination-in-chief, cross-examination and re-examination of the complainant must be conducted within three months of assigning the case. The Court has option of accepting affidavits of the witnesses, instead of examining them in Court. Witnesses to the complaint and accused must be available for cross-examination as and when there is direction to this effect by the Court.”

3. It is pertinent to note that till today the learned counsel for the petitioner has neither served copy of the petition along with the annexures upon the learned counsel for the respondent nor has furnished the copy of the restoration application.

4. The learned counsel for the respondent submits that she has appeared on her own since she had filed Vakalatnama. In view of this, the application seeking restoration does not deserve to be allowed. The application is dismissed.

(SMT.SADHANA S.JADHAV, J.)