

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO. 1531 OF 2016

Chheda Properties	...	Petitioner
vs.		
Amogh Enterprises & Ors	...	Respondents

Mr. K.S.Garg, Advocate for the petitioner.
Mr. Yatin R. Shah, for respondent.
Ms. A.A.Mane, APP, for the State.

CORAM: SMT. SADHANA S.JADHAV, J.
DATE : 8th June, 2016.

P.C.

Heard. Rule. Rule made returnable forthwith with consent of the parties.

2. This is a petition under Article 227 of the Constitution of India. The petitioner herein happens to be the original complainant in C.C. No.488 /SS/2012. The petitioner herein had filed a complaint against the respondent under Section 138 of Negotiable Instruments Act. It appears from the record that the affidavit of evidence was filed on 24.10.2013. The cross-examination had in fact commenced on 19.1.2015.

3. The learned counsel for the petitioner submits that intermittently the accused filed an application seeking adjournment and the learned Magistrate has been liberal enough to adjourn the matter from time to time. It appears from the record that cross-examination was conducted on 5.8.2015 partly. It then commenced on 29.9.2015. It was adjourned on 6.4.2016, 5.8.2015 and 6.4.2016. It was in these circumstances that the present petitioner was constrained to file the present Writ Petition seeking expeditious trial. The learned counsel for the petitioner has placed on record an application filed by the accused on 12.5.2016 seeking adjournment on the ground that the petition filed by the present petitioner is pending before the Hon'ble High Court. In fact, this Court is of the opinion that pendency of the petition in the High Court by itself cannot be construed as a stay to the proceedings before the lower Court as long as there is no specific order to that effect. However, the matter was adjourned.

4. The learned counsel for the petitioner has relied upon the judgment of 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, wherein the Hon'ble Apex Court was pleased to issue directions as far as

the trial in the case of Section 138 of N.I. Act is concerned. The Hon'ble Apex Court has observed as follows :-

“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.”

5. The learned counsel for the respondent herein fairly submits that he would inform the Advocate appearing for the respondent in the trial Court that this Court is of the opinion that the respondent shall by all means co-operate with the Court in expediting the trial, as far as possible. Hence, the following order :-

ORDER

(i) The learned Metropolitan Magistrate, 43rd Court, Borivali, Mumbai shall make an endeavour to conclude the recording of evidence in C.C. Nos. 488/SS of 2012, 606/SS of 2012 and 773/SS of 2012 within six months from the date of receipt of this order.

(ii) Office is directed to inform the concerned Court about the order forthwith.

6. Rule is made absolute in the above terms. Writ Petition stands disposed of.

(SMT.SADHANA S.JADHAV, J.)