

Anand

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO.1164 OF 2016

Creative Peripherals and .Applicant
Distribution Pvt. Ltd.

Vs.

Ravindra Dekhne & anr. .Respondents

Mr.M.H.Ramsinghani i/b. Mr.D.M.Galani, Advocate,
for the Applicant
Mr.R.N.Sukhiya, Advocate, for the Respondent
No.1
Mr.S.R.Agarkar, APP, for the Respondent No.2 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 14.10.2016

P.C.

. Heard learned counsel for the parties.

2. Rule. Rule is made, returnable
forthwith with the consent of the parties.
Mr.Sukhiya waive notice on behalf of Respondent
No.1 and the learned APP on behalf of Respondent
No.2 – State.

3. By this Application, the Applicant has impugned the order dated 17.09.2016 passed by the learned Special Judge, City Civil & Sessions Court, Mumbai, below Misc. Application No. 1957 of 2016 filed in Cri. Revision Application. By the said Misc. Application, the Applicant had sought condonation of delay of 195 days in filing the Revision Application. The said Revision Application was filed for enhancement of the sentence awarded to the Respondent No.1 (Original Accused) by the trial Court.

4. Learned counsel for the Applicant submits that in the said delay condonation Application, the Applicant had specifically averred, that the Respondent No.1 (Original Accused) had approached Mr.Ketan Chhaganlal Patel, the Managing Director & Chief Executive Officer of the Applicant and had stated that he was ready to settle/compromise the matter. He submitted that believing the said

representation, that the Respondent No.1 would make the payment/settle the matter, the Applicant did not file the Revision Application seeking enhancement of the sentence of the Respondent No.1 (Original Accused). He submits that the Applicant has set out the grounds in detail, in the delay condonation Application and as such, in the light of the averments made in the Application, the Revisional Court ought to have condoned the delay of 195 days in filing the Revision Application and ought to have heard the Revision Application on its own merits. Learned counsel for the Applicant further submits that despite the fact that the Respondent No.1's evidence was suspended, on the condition that the Respondent No.1 deposits 20% of Rs.1,11,76,784/- (Compensation Amount) i.e. Rs.22,35,357/-, the said amount has not been deposited by the Respondent No.1 till date. He further submitted that as the Respondent No.1 failed to deposit the said amount, despite

extensions granted to him, he was taken into custody and is presently in jail.

5. Learned counsel for the Respondent No.1 submits that no such assurance/promise was ever made by the Respondent No.1 to the Applicant. He submits that there is no sufficient cause made out by the Applicant in the delay condonation Application, for condoning the delay. According to him, the Applicant was pursuing the matter right from the beginning when the Respondent No.1 had filed an Appeal and infact,ailable warrants were issued on an Application filed by the Applicant and thereafter, even an NBW was issued against the Respondent No.1.

6. Perused the papers. The Respondent No.1 has been convicted for the offence punishable under Section 138 of the Negotiable Instruments Act and has been sentenced to suffer S.I. for six months. The Respondent No.1 was also

directed to pay fine of Rs.1,11,76,784/-, in default to undergo S.I. for 15 days. Out of the said fine amount, the Applicant (Original Complainant) was entitled to get compensation amount of Rs.1,11,76,784/-. Against the said Judgment and Order of conviction & sentence dated 06.11.2015 passed by the learned Metropolitan Magistrate, 14th Court, Girgaum, Mumbai, the Respondent No.1 filed an Appeal in the Sessions Court along with a Misc. Application, seeking suspension of his substantive sentence. The learned Sessions Judge vide order dated 29.02.2016 was pleased to pass the following order.

" O R D E R

a. The substantive sentence of imprisonment imposed by Ld. Metropolitan Magistrate upon the appellant in case no.1402172/11 dtd. 6/11/2015 is suspended till disposal of appeal on following conditions.

1). That the applicant shall deposit 20% amount of Rs.1,11,76,784/- within one

month from today.

b. In view of the above order,
the Misc. Application 3326/2015
is disposed off."

7. It appears that the Respondent No.1 failed to deposit the amount as directed, within one month from the date of the order. The Respondent No.1 sought extension of time to deposit the said amount and accordingly, time was extended by a period of two weeks. It appears that thereafter, bailable and non-bailable warrants and even proclamation were issued against the Respondent No.1. It appears that the Applicant (Original Complainant) filed a Cri.Revision Application seeking enhancement of the sentence imposed by the trial Court on 30.08.2016. Along with the said Revision Application, Misc. Application No.1957 of 2016 was also filed, seeking condonation of delay of 195 days in filing the said Revision Application. It is specifically averred by the

Applicant in para 3 of the said Misc. Application, that after passing of the Judgment and Order of conviction, the Respondent No.1 approached Mr.Ketan Chhaganlal Patel, the Managing Director and Chief Executive Officer of the Applicant and requested to compromise and/or settle the matter. The Respondent No.1 is stated to have informed that he was trying to make arrangements for payment of the money to the Applicant. The Applicant has stated that the Respondent No.1 also informed him that several of his clients had assured him that they would make payments to him, from which he would pay the Applicant. The Applicant has stated that believing the said representation, that the Respondent No.1 intended to make payments, the Applicant did not take steps to file appropriate proceedings seeking enhancement of the sentence. The Applicant has also stated the delay in filing the Revision Application was occasioned for the reason which is solely attributable to

the Respondent No.1. The Application has been filed by the Applicant on oath. A perusal of the Application shows that sufficient cause was made out by the Applicant to condone the delay of 195 days in filing the Revision Application.

8. Considering the aforesaid in the peculiar facts of this case and in the interest of justice, the Application is allowed. The impugned order dated 17.09.2016 passed by the learned Special Judge, City Civil & Sessions Court, Mumbai, below Misc. Application No. 1957 of 2016 in Cri. Revision Application, is quashed & set aside. Delay of 195 days in filing the Revision Application is condoned. The learned Judge to hear the aforesaid Revision Application filed by the Applicant alongwith the Cri.Appeal No.1101 of 2015, on its own merits, in accordance with law.

9. Accordingly, the Application is disposed of.

Parties to act on the authenticated copy of this order.

(REVATI MOHITE DERE, J.)