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

CRIMINAL APPLICATION NO.1223 OF 2016

Sewaram Hariramji Daga .Applicant

Vs.

SSJ Commodities Pvt. Ltd. & anr. .Respondents

Mr.Pandit Kasar, Advocate, for the Applicant
Mr.V.V.Gangurde, APP, for the Respondent No.2 –
State

CORAM : REVATI MOHITE DERE, J.

DATE : 23.11.2016

P.C.

. Heard learned counsel for the
Applicant.

2. By this Application, the Applicant
seeks quashing and setting aside of the impugned
order dated 01.04.2013, by which process was
issued by the learned Metropolitan Magistrate's
33rd Court, Ballard Pier, Mumbai in
C.C.No.2086/SS/2012.

3. Learned counsel for the Applicant

states that (i) there is no legally enforceable debt and that the transaction has not been explained in the complaint by the Respondent No.1 – Complainant; and (ii) that there are no averments in the complaint as required under Section 138 of the Negotiable Instruments Act. He submits that the cheques were dishonoured not 'for insufficiency of funds' but as stop payment was issued.

4. Perused the complaint. A perusal of the complaint shows that the Respondent No.1 (Complainant) herein, has set out the nature of transaction between him and the Applicant and how cheques were issued by the Applicant pursuant to the same. It may be noted that the Applicant is the sole accused in the said case. The Complaint also shows that the cheques which were deposited have been returned unpaid by the Applicant's Bankers vide Return Memo dated 21.8.2012 with the remark "opening balance

insufficient/payment stopped by drawer". Prima facie, the complaint discloses that the Applicant had entered into a transaction with the Respondent No.1 – Complainant and had issued cheques in part discharge of his liability. The complaint also discloses that the cheques were returned unpaid. The submissions advanced by the learned counsel for the Applicant are such, that evidence would have to be led and hence, the complaint cannot be dismissed at the threshold. Prima facie, the averments are sufficient to attract the provisions of the Negotiable Instruments Act. There is no merit in the Application.

5. Accordingly, the Application stands rejected & is disposed of. The learned trial Judge shall decide the case on its own merits uninfluenced by the observations made in this order.

(REVATI MOHITE DERE, J.)