

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPLICATION NO. 1290 OF 2017

Shaukat Sultana Abdul Hakim

..APPLICANT

VERSUS

M/s Yashraj Developers

Through its Partners

Sahebrao Dadarao Kapde and Others

..RESPONDENTS

Mr. Swapnil Patunkar, Advocate i/b M/s J.P. Legal
Associates for applicant

Mr. S.S. Panale, Advocate for respondents

CORAM : SANGITRAO S. PATIL, J.

DATE : AUGUST 24, 2017

ORAL JUDGMENT :-

Notices were issued to the respondents as per order dated 22nd June, 2017 and the parties were given to understand that this Court may hear and dispose off the application seeking leave to file appeal alongwith the appeal at this stage.

2. Heard the learned Counsel for the applicant and that of respondents.

3. Arguable points are raised. The application seeking leave to file appeal is allowed.

4. Admit the appeal. On admission of the appeal, Mr. Panale, learned Counsel waives service of notice on behalf of respondents.

5. Heard the appeal finally with the consent of the learned Counsel for parties.

6. The appellant has challenged the order dated 13th January, 2017 passed in S.C.C. No. 6193 of 2015 by the Judicial Magistrate First Class (Court No.5), Aurangabad, whereby the respondents came to be acquitted of the offence punishable under Section 138 of the Negotiable Instruments Act vide Section 256 of the Code of Criminal Procedure, on the ground that none appeared for the appellant when the above numbered criminal case was fixed for hearing.

7. The learned Counsel for the appellant submits that the date of hearing of the above numbered criminal case before the Trial Court was not communicated by the advocate of the appellant. Consequently, the appellant could not appear before the Trial Court on 13th January, 2017, when the said case was kept for hearing. He submits that because of the fault on the part of the advocate of the appellant, the Trial Court acquitted respondents of the above mentioned offence. He submits that because of the mistake on the part of the advocate, the appellant cannot be made to suffer. The cheque, which is the subject matter of the above numbered criminal case, was of Rs.5,00,000/-. The appellant was very much interested in prosecuting the case. He, therefore, submits that the appellant may be extended an opportunity to proceed with the case by setting aside the impugned order.

8. The learned Counsel for respondents opposed the claim of the appellant on the ground that the

particulars of the offence were explained to respondents much earlier prior to 13th January, 2017. Thereafter, the case was adjourned from time to time for hearing. However, the appellant did not appear before the Trial Court. Consequently, left with no alternative, the learned Magistrate passed the impugned order. He supports the impugned order and prays that the appeal may be dismissed.

9. The complaint was filed since the cheque in the sum of Rs.5,00,000/- issued by respondents, was alleged to have been dishonoured. Considering the amount of the cheque, it cannot be said that the appellant was not, in fact, interested in proceeding with the case. He must be very much interested in agitating his claim in respect of the cheque by taking the above numbered criminal case to its logical end. It cannot be said that the appellant deliberately or intentionally remained absent before the Trial Court when the said case was kept for hearing.

10. In the circumstances, the reason given by the appellant that because of non-communication of the date of hearing of the case by his advocate, he could not attend the Court when it was fixed for hearing, being natural and probable, will have to be accepted and accordingly accepted. Consequently, the appellant will have to be extended an opportunity to proceed with the case.

11. In the result, I pass the following order :-

O R D E R

i) Criminal Appeal is allowed.

ii) The impugned order dated 13th January, 2017 passed in S.C.C. No. 6193 of 2015 is quashed and set aside.

iii) The above criminal case is ordered to be restored to its original number for disposal according to law.

iv) The parties shall remain present before the Trial Court on 21st September, 2017 positively.

v) The appellant shall pay Rs.3,000/- (Rupees Three Thousand Only) to the respondents as costs.

vi) Criminal Appeal is disposed off accordingly.

[SANGITRAO S. PATIL]
JUDGE

SSD