

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

CRIMINAL WRIT PETITION NO. 564 OF 2016

Devanand S/o Rajaram Junjare, Aged 55 **PETITIONER**
Years, Occupation Service, Resident of
Chattrapati Shivaji Nagar, Sillod,
Taluka Sillod, District Aurangabad

V E R S U S

Pramod S/o Dinkar Sonar, Aged 55 **RESPONDENT**
Years, Occupation Agriculture,
Resident of Jai Bhavani Nagar, Sillod,
Taluka Sillod, District Aurangabad

Mr. S.G. Nandedkar, Advocate, holding for
Mr. D.Y. Nandedkar, Advocate for the Petitioner
Mr. V.D. Sonawane, Advocate for the Respondent

CORAM : T.V. NALWADE, J.

DATE : 13th DECEMBER, 2017

ORAL JUDGMENT :

This petition is filed to challenge the order
made by learned Judicial Magistrate, First Class,
Sillod, in Criminal Misc. Application No. 611 of 2015.

2. Both the sides are heard.

3. Criminal Misc. Application No. 611 of 2015 was filed by the petitioner for condonation of delay of eight days caused in filing complaint for the offence punishable under Section 138 of Negotiable Instruments Act. In support of the contentions made in the application, affidavit of the complainant-applicant was filed on 1st July, 2015. The learned Judicial Magistrate, First Class dismissed the complaint on 25th November, 2015, by observing that the complainant and his Advocate were not present before the Court and no record was produced to substantiate the contentions made in the application for condonation of delay.

4. The learned counsel for the petitioner has produced copy of *Roznama* showing that he had filed affidavit in support of the contention on 1st July, 2015 and according to him after filing of the affidavit, respondent had to file reply, but he failed to file the same. The learned counsel has produced on record some papers of Krushna Clinic, Akola in respect of daughter of applicant showing that she was

suffering from Hepatitis-B and she was pregnant at the relevant time when he was expected to file complaint. Thus, he has the record and he had filed affidavit in that regard. It can be said that only due to absence of the complainant and his Advocate, the order of dismissal of delay condonation application came to be passed. It is the case of dishoour of cheque and delay could have been condoned if sufficient cause is shown.

5. It appears that the petitioner-complainant ought to have remained present for verification of contents of the affidavit before the Court, but he did not remain present. He is resident of Sillod. In that regard also, the contentions are made by the petitioner in the application. It can be said that many times necessary instructions are not given by the Advocate to the client in this regard. The client cannot be made to suffer due to such lapse on the part of the Advocate. In view of this circumstance, this Court holds that an opportunity is necessary to be given to the petitioner to get the decision on the application filed for condonation of delay on merits.

This Court holds that the impugned order needs to be set aside and matter needs to be remanded back to the trial Court for fresh consideration of the application.

6. According to the learned counsel for the respondent, due to the lapse on the part of the petitioner-complainant, the respondent is required to spend more on present proceeding and, this circumstance may be considered.

7. In view of the amount of cheque and aforesaid circumstances, this Court holds that the petitioner is liable to pay costs of Rs.3,000/- of the present proceeding.

8. In the result, the petition is allowed subject to deposit of costs of Rs.3,000/- in this Court, within 15 days from today. If the amount, as directed, is deposited, the order passed by the learned Judicial Magistrate, First Class, Sillod dated 25th November, 2015, is to be treated as set aside and

matter is to be remanded back to the learned Judicial Magistrate, First Class, for fresh consideration. Costs to be paid to the respondent.

Parties to appear before the learned Judicial Magistrate, First Class on 10th January, 2018.

9. Petition is allowed in aforesaid terms.

(T.V. NALAWADE, J.)