

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

CRIMINAL APPLICATION NO. 3299 OF 2017

Shri Agrasen Co-operative Bank Ltd., Kannad
Through its Recovery Officer

..APPLICANT

VERSUS

Rajendra Narayan Harde Patil

..RESPONDENT

Mr. P.F. Patni, Advocate for applicant.

Mr. Anant Devakate, Advocate for respondent.

CORAM : V.L. ACHLIYA, J.

DATED : 13th SEPTEMBER, 2017

ORDER :

1. The petitioner herein i.e. the complainant in proceeding filed under Section 138 of the Negotiable Instruments Act has challenged the order dated 10th April, 2017 passed by the learned Judicial Magistrate First Class, Kannad. By the impugned order, the learned Magistrate has rejected the application (Exhibit 37) filed by the applicant seeking permission to lead the secondary evidence. The application has been rejected mainly for the reason that the details as to loss of cheque, efforts made to trace the same, etc. are not find place in the application.

2. The learned Counsel for the petitioner submits that though the application as made contains requisite details as contemplated under law, still

if the Court finds it necessary to have more details to entertain request to entertain the application, the applicant is willing to file fresh application

3. The learned Counsel for the respondent submits that he has no objection to allow the petition to make a fresh application to lead secondary evidence in the matter.

4. In view of the limited controversy involved in the matter and the view taken by the Trial Court that the application as filed is not sufficient to grant permission to lead secondary evidence in the matter, without going into merits of the submissions advanced and to adjudge the legality of order passed, the applicant be permitted to file fresh application. By consent, the impugned order is set aside. The petitioner is permitted to file a fresh application supported with the affidavit by incorporating requisite details. In case such application is filed, the Trial Court is directed to decide the same on its own merits without influenced by the earlier order of rejection dated 10th April, 2017 passed in the matter.

Application stands disposed off in the above terms.

(V. L. ACHLIYA, J.)

SSD