

IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL APPEAL NO. 8 OF 2017

M/S. VINAYAK J. THALI SAW MILL,
REP. BY ITS PROPRIETOR, MR.
VINAYAK J. THALI.,

... Appellant

Versus

M/S. DMR ENTERPRISES, REP. BY ITS
AUT. SIG. M. DEEPA M. RANE.,

... Respondent

Mr. Jagannath Jayant Mulgaonkar, Advocate for the appellant.
Mr. M. S. Joshi, Advocate for the respondent.

Coram:- C. V. BHADANG, J.

Date:- 2nd February, 2017

P.C.

Taken upon board and heard finally by consent of the parties.

2. The appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (the Act, for short) against the respondent for dishonour of cheque in the sum of Rs.6,49,779/-. On 18/10/2016, when the complaint before the learned Magistrate was fixed for evidence, time was sought by the learned Counsel for the appellant on the ground that the appellant was ill. The learned Magistrate has found that there was no written application or a medical certificate produced and in that view of the matter, has dismissed the complaint for non-prosecution and acquitted the respondent, which is challenged in this appeal.

3. I have heard the learned Counsel for the appellant and the

learned Counsel for the respondent. With the assistance of the learned Counsel for the parties, I have gone through the impugned order passed and the copy of the roznama in the complaint case.

4. It appears that although the complaint is of the year 2012, the particulars of offence were explained to the respondent only on 04/08/2016 and the complaint was fixed on 04/10/2016, on which date, it was adjourned to 18/10/2016 as the Presiding Officer was on leave. The learned Counsel for the appellant is, thus, justified in saying that after the particulars were explained on 04/08/2016, 18/10/2016 was the first effective date for recording the evidence of the appellant. This is not to suggest that the appellant/ complainant can justifiably remain absent, claiming that it is only the first date. However, the fact remains that after the particulars were explained, the first effective date was 18/10/2016. The appellant has produced a medical certificate issued by Dr. Ravish Kolwalkar, which shows that the appellant was admitted on 05/10/2016 for Osteoarthritis (L) and was operated on 06/10/2016 for total Knee Replacement surgery.

The Medical Certificate further discloses that the appellant was discharged on 10/10/2016 and was advised rest for a period of 15 days. The impugned order is passed on 18/10/2016 i.e. during the period when the appellant was advised rest. Thus, I find that a case for restoration of the complaint is made out. However, at the same time, it is necessary to mention that the appellant well

could have produced the Medical Certificate before the learned Magistrate, in which event, the learned Magistrate could have considered granting indulgence. In my considered view, the appeal of the present nature, is really in the nature of an avoidable litigation, if the parties produce necessary material in support of the ground for adjournment. If such a material is produced, the Court is bound to consider the same. In the given circumstances and the fact that the appellant was operated for Total Knee Replacement and was advised rest, I find that indulgence can be granted, subject to costs of Rs.5,000/-.

5. In the result, the appeal is allowed. The impugned order is hereby set aside, subject to payment of costs of Rs.5,000/-, to be deposited before the District Legal Services Authority. On deposit of the costs, the complaint shall stand restored to file. The learned Counsel for the appellant undertakes that the appellant shall prosecute the complaint diligently. The parties to appear before the learned Magistrate on 16/02/2017 at 10.00 a.m.

6. The Criminal Appeal is disposed of in the aforesaid terms.

C. V. BHADANG, J.

SMA