

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

**CRIMINAL APPLICATION NO. 1339 OF 2015
IN
C. C. NO. 3526/SS/2012**

Amit Jhaveri, Mumbai

... Applicant

vs.

M/s. Daulat Exim Ltd. & ors.

... Respondents

Mr. Sanjeev P. Kadam, Advocate for the applicant.

Mr. Kushal Mor, Advocate for respondent no.1.

Mr. S. R. Agarkar, A.P.P. for the State/respondent no.2.

Coram : Smt. R. P. SondurBaldota, J.

Date : 13th January, 2017

P.C. :

1. The ostensibly innocuous order impugned in this application rejects applicant's application for an adjournment to enable him to examine his witness. The application as drafted does not state the background of the application for adjournment. Respondent no.1 vehemently opposes the application contending that it is an abuse of process of law and nothing but an attempt to delay the conclusion of the trial in the proceedings under Section 138 of the Negotiable Instruments Act.

2. The brief background of the impugned order is that the applicant who is the original accused had filed an application at Ex.171 under Section 311 of Criminal Procedure Code for production of documents as well as examination of a

witness. The application had been opposed by respondent no.1. By the order dated 21st October, 2015, the trial Court allowed the application to the extent of examination of witness by name Uday Jasani for a limited purpose. The grant of application was subject to the applicant depositing necessary witness bhatta including traveling allowance (TA) and dearness allowance (DA) of the witness in the Court. It was further directed that he shall, without fail examine the witness on the next given date i.e. on 28th October, 2015. The operative part of the order reads as under :

- "1. Application **Exh.172** is partly allowed to the extent of examination of witness Uday Jasani.
2. Permission is granted to the applicant to examine witness Uday Jasani only up to the extent of meeting of board of directors of complainant held on 14/09/2000 subject to depositing necessary witness Bhatta including T.A. & D.A. of witness in the court.
3. Applicant to examine the witness on next given date without fail.
4. **Parties to expedite trial.**"

3. The applicant did not take immediate steps for deposit of TA and DA for the witness and issuance of witness summons. The necessary formalities were completed and the witness summons was collected by him as late as on 17th November, 2015. On the next date i.e. on 1st December, 2015, he sought an adjournment on the ground of death of a relative. On 4th December, 2015 also he filed an application for adjournment for the reason that he was required to attend the obsequial rites of the relative. The trial Court passed the impugned order and rejected his application and adjourned the matter for judgment to 14th December, 2015, since the entire trial including the arguments in the matter are complete. On

the date of judgment, the applicant again sought an adjournment to challenge the order dated 4th December, 2015 before this Court. Since then the proceedings are pending in the trial Court for judgment. The applicant had also taken some time on the pretext of settlement of the dispute.

4. This conduct of the applicant is patently unjustifiable. As such in fact he would not be entitled to any relief from this Court. The opportunity of bringing in further evidence was given to the applicant which is being abused by him. From 21st October, 2015 he had been getting the matter adjourned on one pretext or the other. However, considering the fact that the applicant had been permitted to examine a witness, in my opinion he can be given one last opportunity to examine his witness but only after compensating respondent no.1 with costs. Considering the conduct of the applicant as also the status of the parties, in my opinion costs of Rs.50,000/- would be reasonable costs to be awarded against him. Hence, the application is disposed off with following order ;

- (1) On the applicant paying costs of Rs.50,000/- to respondent no.1 within a period of one week from today, the application is allowed in the terms of prayer clause (a) and (b).
- (2) In the event the applicant fails to pay costs to respondent no.1 within the time granted, the application will stand dismissed without any further reference to the Court and the trial Court shall proceed with the matter for judgment.

[Smt. R. P. SondurBaldota, J.]