

Gorakh s/o Bhujangrao Raut ... **Applicants**
Age 50 years, Occu: Agriculture
R/o Kadim-Shahapur
Tq. Gangapur, Dist. Aurangabad.

VERSUS

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| 1 | State of Maharashtra | | |
| 2 | Chandrabhagabai s/o Shivaji Shewale, ...
Age 54 years, Occu: Household,
R/o Dhoregaon, Tq. Gangapur
Dist. Aurangabad. | | Respondents |

Mr. S. A. Gaikwad, Advocate for the applicant
Mr. A. B. Chate, APP for respondent No.1 State
Mr. A. S. Shaikh, Advocate for respondent No.2

CORAM : K. L. WADANE, J.
DATE : 24th October, 2018

JUDGMENT:

1. Heard learned counsel for the applicant, learned APP for the State and learned counsel for respondent No.2.
2. Respondent No.2 herein filed a complaint under section 138 of the Negotiable Instruments Act bearing SCC No.691/2014 against the present applicant before the J.M.F.C, Gangapur and the allegations are

that respondent No.2 advanced hand loan of Rs.2,34,000/- to the applicant on 04.07.2014 and the applicant issued a cheque in question against the said amount. The said cheque was dishonoured on 04.08.2014 with remark "Funds Insufficient".

3. Learned counsel for the applicant submits that on 16.08.2018, the matter was posted for defence evidence and the applicant/accused was to examine himself as defence witness. Advocate of the accused prepared examination-in-chief of the applicant/accused alongwith documents. The Advocate representing the accused/applicant is pursuing the matter from Aurangabad and due to heavy rain, he could not remain present, when the matter was called out at 12.30 p.m. by the trial Court and ultimately, the trial Court passed order below Exh.1 to the effect that "evidence of the accused stands closed" and the matter was posted for final argument. On the same day, at about 1.00 p.m., the applicant/accused filed application for setting aside the order passed below Exh.1 by filing application Exhibit 62. Learned counsel further submits that the advocate representing the applicant/accused was from the Aurangabad and due to heavy rain he could not reach the trial Court within time.

4. Learned counsel for the respondent invited attention of this Court to various adjournments sought by the applicant accused. I have gone through the contents of Roznama since beginning as well as the reasons recorded by the trial Court.

5. On perusal of the Roznama, it appears that evidence of the complainant/respondent No.2 was started on 30th July, 2016 and it was closed on 25th August, 2016. On 13th October, 2016, accused applicant was absent and hence the matter was posted for recording statement of the accused under section 313 of the Criminal Procedure Code to 5th January, 2017. Thereafter, the matter was adjourned for some times for absence of the accused and lastly, the learned trial court closed the evidence on 16.08.2018. Therefore the applicant submitted the application Exh. 62 for setting aside the same which came to be rejected by order dated 27.09.2018.

6. On perusal of the Roznama, it appears that on 6th March, 2017, the applicant/accused was permitted to adduce his defence evidence subject to cost of Rs.300/-. Again the matter was adjourned from time to time till 16.08.2018. Roznama dated 16.08.2018 shows that both the parties were absent when the matter was called, therefore the order

was passed below Exh.1.

7. From the contents of the Roznama as well as the reasons recorded by the learned Trial Court it is seen that sufficient and ample opportunity was given to the applicant/accused to lead his evidence. However, it appears that the matter was prolonged deliberately by the applicant and therefore the trial Court has rightly rejected the application Exh.62 by passing reasoned order.

8. In view of the above, no case is made out to exercise the jurisdiction of this Court under the provisions of Section 482 of the Criminal Procedure Code. Hence the application is rejected.

(K. L. WADANE, J.)

JPC