

IN THE HIGH COURT OF BOMBAY AT GOA
CRIMINAL MISC. APPLICATION NO. 165 OF 2017
IN
CRIMINAL MISC. APPLICATION NO. 12 OF 2015

VIVIDHA URBAN CO-OP. CREDIT
SOCIETY LTD., REP. BY BERNARD S.
MUTTI (DEC) REP. BY RESHMA
SAKHALKAR.,

... Applicant

Versus

DR. PRAKASH MUKUND RANE AND ANR..

... Respondent

Mr.Gaurish N. Agni, Advocate for the applicant.
Mr. G.Gaonkar, Advocate for respondent no.1.

Coram:- PRITHVIRAJ K. CHAVAN, J.

Date:- 9th January 2018

P.C.

By this application, the applicant prays for recalling the order dated 24th June, 2015 passed by this Court in dismissing the application for leave to appeal bearing CRMA No.12 of 2015 in Criminal STM No.3280/2014.

2. Heard Shri Gaurish Agni, learned counsel for the applicant and Mr. G.Gaonkar, learned counsel for respondent no.1.

3. At the outset, it is submitted by the learned counsel for the applicant that the applicant is a Co-operative Credit Society, who had granted loan of Rs. Two lakhs to respondent no.1. A cheque

issued by respondent no.1 in repayment of the loan was dishonoured and, therefore, the applicant moved the learned Court of JMFC under Section 138 of the Negotiable Instruments Act by filing a complaint bearing No.347/AOA/NIA/2012/C. The learned trial Court acquitted respondent no.1 by its judgment and order dated 1.10.2014.

4. Being aggrieved, the appellant-applicant preferred Criminal Appeal bearing Stamp No.(Main)No.3280/2014 against the judgment and order passed by the learned Magistrate on 1.10.2014.

5. A notice was issued by this Court on an application for leave to appeal on the address of respondent no.1 mentioned in the cause title. The applicant had paid process fee also. However, the summons returned by stating that the respondent no.1 was not found at the given address. The matter was thereafter adjourned from time to time for taking steps. Ultimately, on 24th June 2015 this Court dismissed the application, as none was present on that date and steps were not taken by the applicant.

6. It is submitted by the learned counsel appearing for the applicant that the efforts were being made to locate the address of respondent no.1, as he could not be served on the address given in the cause title. It is also submitted that all attempts were

being made by the applicant including inquiries with the sureties of the respondent no.1, who were also unaware about the whereabouts of respondent no.1. It is also stated that the applicant had contacted the local Panchayat and Authorities to find out the address of respondent no.1 and thereafter, ultimately the same address was found to be the address of respondent no.1 where he was served. In that process, a period of one year and 9 months had elapsed in filing the application for restoration. It is submitted that the applicant has good case on merits in succeeding in appeal and, therefore, learned counsel has prayed for recalling the order dated 24.6.2015.

7. It reveals from the original record that when the police had been to serve the summons upon respondent no.1 on the same address, it was found during their inquiry that respondent no.1 was not found at his residence and his whereabouts are not known. The submissions on behalf of the respondent that he has been residing at the same address for the last 20 years would indicate that he must have made some attempt to thwart the service on the same address. It would not be advantageous to the applicant to deliberately delay the matter since it is the applicant who seeks leave to appeal against the order of acquittal and, therefore, I find substance in the submissions made by learned counsel for the applicant. Of Course, there is a delay of more one and half years in moving the application for restoration and,

therefore, adequate costs is required to be imposed upon the applicant as the applicant could have been more diligent in prosecuting his remedy. I am, therefore of the view that while recalling the order dated 24th June, 2015 passed by this Court, the applicant shall have to pay costs of Rs.3000/- to respondent no.1. On payment of costs, the application for leave to appeal would stand restored.

8. Application stands disposed of.

PRITHVIRAJ K. CHAVAN, J.

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