

IN THE HIGH COURT OF BOMBAY AT GOA

STAMP NUMBER MAIN NO. 2497 OF 2018

NITIN UPADHYAY AND ANR., ... Petitioners

Versus

BHIKAJI ARJUN GAWADE AND ANR., ... Respondents

Shri M. S. Joshi, Advocate for the appellants.

Shri A. D. Bhobe, Advocate for the respondent no.1.

Coram:- C. V. BHADANG, J.

Date:- 26th November 2018

ORAL ORDER :

Heard Shri Joshi, the learned Counsel for the appellant and Shri Bhobe, the learned Counsel, who waives service on behalf of the first respondent.

2. Taken up for final disposal by consent of parties.

3. The appellant is the original complainant in a complaint under Section 138 of the Negotiable Instruments Act (the Act, for short), filed against the first respondent. On 27/04/2018, the appellant filed an application for exemption on the ground that he has been held up in official work and therefore, could not attend the hearing. Incidentally, the appellant is working as a Professor in the Goa Institute of Management. The learned

Magistrate found that sufficient opportunity was granted to the appellant and further found that no case for grant of further adjournment / exemption was made out.

4. Shri Joshi, the learned Counsel for the appellant has taken me through the roznama, in order to submit that the finding by the learned Magistrate that for one year, the party had failed to appear before the Trial Court, is not correct and borne out of record.

5. Shri Bhobe, the learned Counsel for the first respondent has supported the impugned order. It is submitted that last and final opportunity was granted to the appellant and even thereafter, the appellant sought exemption.

6. I have considered the circumstances and the submissions made.

7. Normally, the Court would prefer to decide the matter on its own merits than on technicalities. Shri Joshi, the learned Counsel for the appellant, to my mind, is right in contending that for one year the appellant had not sought time as has been observed by the learned Magistrate. Although the appellant could have been well advised to act with due expedition, the impugned order refusing exemption and adjournment to the appellant, to

my mind, cannot be sustained.

8. Shri Joshi, the learned Counsel for the appellant, on instructions, states that the appellant shall positively lead the evidence on the next date or on any other date, to which the learned Magistrate adjourns the complaint. The statement is accepted. In such circumstances, the following order is passed :

(i) The appeal is allowed.

(ii) The impugned order is hereby set aside.

(iii) Criminal Case No.89/OA/NIA/2016/B is restored to the file of the Judicial Magistrate, First Class, 'B' Court, Vasco, for disposal according to law.

(iv) Parties to appear before the learned Magistrate on 10/12/2018 at 10.00 a.m.

C. V. BHADANG, J.

SMA