

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.78 OF 2018

RAMSON HITERS INDUSTRY)...APPLICANT

V/s.

THE STATE OF MAHARASHTRA & ANR.)...RESPONDENTS

Mr.V.V.Ugle, Advocate for the Applicant.

Mr.Rohan Barge, Advocate for Respondent No.2.

Mrs.M.R.Tidke, APP for the Respondent - State.

CORAM : A. M. BADAR, J.

DATE : 27th SEPTEMBER 2018

P.C. :

1 Heard. Leave as prayed is granted. Admit. Heard forthwith by consent of parties.

2 The learned counsel for the applicant/original complainant argued that the applicant and his advocate were diligent in attending the complaint case but unfortunately

advocate of the applicant died during pendency of the proceedings on 29th May 2017. Subsequently, the applicant could not attend the learned trial court and this has ultimately resulted in dismissal of the complaint on 11th August 2017 by resorting to provisions of Section 256 of the Code of Criminal Procedure. It is argued that the learned trial court ought not to have dismissed the complaint, considering the amount of cheque and the applicant was prevented by sufficient cause in not appearing before the court.

3 The learned counsel appearing for the respondent no.2/original accused vehemently opposed the application by contending that even if it is accepted that the learned advocate for the applicant/original complainant expired during pendency of the complaint, the applicant ought to have moved application for adjournment on each and every date of hearing, and therefore, the application needs to be rejected.

4 I have carefully considered the submissions so advanced and perused the record made available. This

application is preferred against the order dated 11th August 2017 passed by the learned Judicial Magistrate First Class, Khadki, District Pune, in Summary Criminal Case No.768 of 2016 which was filed by the applicant/original complainant for the offence punishable under Section 138 of the Negotiable Instruments Act. The averments therein were to the effect that on request of respondent no.2/accused 53 Air Heaters were sold at agreed price and accordingly, this goods were delivered to the respondent no.2/original accused. Accordingly, respondent no.2/original accused had made payment of cost of the material supplied vide cheque for the amount of Rs.2,98,125/-. However, on presentation of that cheque to the banker, it came to be dishonoured because of insufficiency of funds. After issuing statutory notice, the applicant/original complainant thereafter chose to file the subject complaint alleging the offence punishable under Section 138 of the Negotiable Instruments Act.

5 It is seen that the applicant/original complainant and his advocate were regular in attending the court up to 28th June

2017. Roznama of 29th May 2017 depicts that the complainant and his advocate were present before the court. It is seen from the Death Certificate annexed to the application that Advocate Nandkumar Agarwal who was representing the applicant/original complainant expired on 29th May 2017. Then on 28th June 2017, 14th July 2017 and 27th July 2017, the applicant/original complainant did not remain present before the court and ultimately on 11th August 2017 the complaint came to be dismissed by resorting to provisions of Section 256 of the Code of Criminal Procedure. The primary function of the court is to adjudicate the disputes on their own merits. It is seen that the learned advocate who was representing the applicant/original complainant before the learned trial court had passed away and that is how the applicant/original complainant could not attend the trial court. Therefore, in the interest of justice, the complaint needs to be restored, in order to decide the same on its own merit. As such, the following order :

ORDER

- i) The application/appeal is allowed.

- ii) The impugned order passed below Exhibit 1 in Summary Criminal Case No.768 of 2016 between the parties is quashed and set aside.
- iii) The complaint for the offence punishable under Section 138 of the Negotiable Instruments Act preferred by the applicant/ original complainant is restored to the file of the learned Judicial Magistrate First Class, Khadki, District Pune. The same be decided in accordance with provisions of law.
- iv) Parties are directed to appear before the learned trial court on **31st October 2018.**

(A. M. BADAR, J.)

**Arti Vilas
Khatate**

Digitally signed by
Arti Vilas Khatate
Date: 2018.10.01
14:01:12 +0530