

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

CRIMINAL APPLICATION NO.262 OF 2018

Pandhe Infracon Pvt. Ltd.	...Applicant
V/s.	
Elvira Sales Agencies Pvt. Ltd. & Ors.	...Respondents

Mr. Vishwanath Patil i/b. Mr. Yuwraj D. Patil for the Applicant.

Mr. K.V. Saste, APP for Respondent State.

CORAM : SMT.BHARATI H. DANGRE, J.

DATE : 06th SEPTEMBER 2018

P.C.:

1. The present application is filed for setting aside the impugned order dated 31.03.2018 passed by the learned Metropolitan Magistrate, Dadar, Mumbai in C.C.No.1667/SS-2017.
2. Perusal of the said order passed on 31.03.2018 would reveal that the complaint is dismissed for want of prosecution and the accused are discharged. It is noted by the learned Magistrate that the matter is pending since 2017 and the record shows that on 25.01.2018 last chance was given to the complainant for verification. It is further observed that the complainant did not turn up to the Court for verification and therefore, the learned Magistrate

arrived at a conclusion that the complainant has lost interest in the case and was pleased to dismiss the complaint for want of prosecution.

3. The application is filed for setting aside the said order. Perusal of the application would reveal that the applicant has stated in Para 3 of the said application that after filing the complaint on 29.07.2017, the matter was posted for verification on 08.12.2017 and on the said date, the complainant was present for verification in the afternoon session, but the matter was called out in morning and it was adjourned to 25.01.2018.

4. In Para 4 and 5 of the said application, the applicant has stated the reasons why the advocate could not remain present before the Court on the given dates.

5. On perusal of the said grounds as stated in Para 3, 4 and 5 of the application, it appears that the default is bonafide and it cannot be concluded and presumed that the complainant was not ready to proceed with the matter. In such circumstances, the conclusion derived by the learned Magistrate that the complainant was not present on the last two different dates would not necessarily lead to conclusion that he was not interested in prosecuting the matter.

6. In the interest of justice and in order to grant an opportunity to the complainant to proceed with the matter, the impugned order

is quashed and set aside. The impugned order would stand recalled subject to the payment of cost of Rs.10,000/- to be deposited in the Police Welfare Fund Account No. 914010029005759, IFSC Code UTIB00000060 within a period of two weeks.

7. On producing the Receipt of such a deposit, the matter would stand restored to the file of the learned Magistrate and then he would proceed with the matter and dispose it expeditiously.

8. Application is allowed in the aforesaid terms.

(SMT.BHARATI H. DANGRE, J.)