

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.639 OF 2017

Amritlal & Company ... **Applicant**
V/s.
Vihat Krupa Traders & Ors. ... **Respondents**

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Mr. Jeetendra Ranawat, Advocate for the Applicant.

Mr.Kunal D. Ambulkar, Advocate for the Respondent Nos.1 to 5.

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

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CORAM : A.M.BADAR J.

DATED : 16th OCTOBER 2018.

P.C. :

1 This is an application for condonation of delay of three years and 215 days i.e. 1381 days for preferring an application for leave to appeal in order challenge the Judgment and Order of acquittal of the respondents of the offence punishable under Section 138 read with 141 of the Negotiable Instruments Act, 1881 passed by the learned trial Court.

2 Heard the learned Counsel appearing for the

applicant/original complainant. He argued that after dismissal of the application for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881, the erstwhile Advocate, who appeared for the complainant was told by the applicant that he want to recover his money and, therefore, the erstwhile Advocate preferred a summary suit for recovery of money due from the respondents. It is further argued that there was miscommunication between the applicant and his erstwhile Advocate. The applicant in fact intended to communicate to the Advocate that the appeal should be filed. Subsequently, the new Advocate engaged by the applicant informed the applicant that he needs to challenge the Judgment and Order of acquittal of the respondents by preferring the appeal before this Court. With this, the learned Counsel for the applicant submitted that the delay in filing the application for leave to appeal is due to sufficient cause and, therefore, needs to be condoned.

3 The learned Counsel appearing for the respondent Nos.1 to 5 opposed the application by submitting that pleadings in the instant application and more particularly paragraph 6 of the application unerringly points out that after dismissal of the complaint and acquittal of the respondents, the learned Advocate for the applicant had instructed him to challenge the Judgment and Order of acquittal before this Court. The learned Advocate for respondent Nos.1 to 5 further pointed out that even the summary

suit was filed on 08/12/2015 whereas the complaint for the offence punishable under Section 138 read with Section 141 of the Negotiable Instruments Act, 1881 came to be dismissed on 30/01/2014. There is a gap of two years in dismissal of the complaint and filing of the summary suit. This delay of two years, in submission of the learned Advocate for the respondents, is not explained by the applicant. He, therefore, prayed for rejection of the instant application.

4 I have considered the rival submissions. What is material while deciding such application is not the quantum of delay, but showing of sufficient cause for getting it condoned. Expiry of period of limitation gives a right to consider the Judgment and Order as final to the other side. In the case in hand, pleadings in paragraph 6 of the application in fact do point out that the applicant was instructed by his Advocate, after dismissal of his complaint, that he needs to challenge that Judgment and Order of acquittal dated 30/01/2014 by filing appropriate proceedings before this Court. Paragraph 7 of the application for condonation of delay goes to show that the applicant then responded to his Advocate that he wants to recover money from the respondents and that is how the summary suit was subsequently lodged. It is thus clear that since inception, the applicant was not intending to challenge the Judgment and Order of acquittal of respondent Nos.1 to 5 in the complaint under

Section 138 read with Section 141 of the Negotiable Instruments Act, 1881. The summary suit initiated by the applicant against the respondents was filed on 08/12/2015.

5 In other words, the applicant has not demonstrated sufficient cause for seeking condonation of delay of three years and 215 days in filing the application for leave to appeal. As sufficient cause is not shown, the following Order :

ORDER

- (i) The application is rejected.

(A.M.BADAR J.)