

*Nalawade*FARAD CONTINUATION SHEET No.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 539 OF 2015
Outlook Impex Pvt. Ltd. vs. Mr. Sujit Tiwari and ors.

Office Notes, Office Memorandum of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders
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Mr. S. Londhe for Rajan Pillai for the Applicant.

Mr. V.V.Gangurde, APP. for the State.

CORAM : A.S.GADKARI, J.

DATE : 27th March, 2018

P.C.

1. This is an application under Section 378(4) of the Cr.P.C. for leave to file appeal against the Order dated 28.6.2012 passed below Exhibit-1 by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai in CC No 3656/SS/2007 thereby dismissing the complaint for want of prosecution.

2. Heard the learned counsel for the applicant. As per the note put up by the registry, respondent No.1 is duly served. None appears for respondent No.1 despite service.

3. The record indicates that the complaint filed by the applicant under Section 138 of the Negotiable Instruments Act was dismissed for want of prosecution by the Trial Court by the impugned Order dated 28.6.2012. The learned counsel for the applicant submitted that, upto 20.2.2010 his client was

regularly perusing the said complaint but subsequently could not attend the said complaint due to unavoidable reasons on three occasions and therefore, the said complaint was dismissed for want of prosecution. The version of the complainant is supported by the roznama on record and is not challenged by the respondent.

In view of the above, I am inclined to allow the present application by setting aside the impugned Order and restore the complaint on the file of learned Magistrate, subject to condition that the applicant shall pay costs of Rs.25,000/- to the High Court Legal Aid Services Committee.

Hence, the following order.

- a) The impugned order dated 28.6.2012 is hereby quashed and set aside and the complaint No. 3656/SS/2007 is restored to the file subject to condition that the applicant shall pay costs of Rs.25,000/- to the High Court Legal Aid Services Committee within a period of three weeks from today.
- b) Payment of costs shall be the condition precedent for restoration of the complaint.
- c) Application is allowed in the aforesaid terms.

(A.S.GADKARI, J.)