

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Criminal Appeal No.407 of 2017
(Vijay Bhimrao Kolhe .vs. Willayam S. John)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions Court's or Judge's orders.
and Registrar's orders

Mr. H.N. Potbhare, Advocate for Appellant.

CORAM : Manish Pitale, J.
DATED : July 02, 2018.

1. In this appeal, on 28.06.2018 the following order was passed:-

"Heard the learned counsel for the appellant.

This appeal challenges order dated 29.07.2016 passed by the Court below whereby the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881, stood dismissed on the ground that the complaint had remained unattended before the Court. There is no decision on merits by the Court below.

Notice was issued and the sole respondent was represented through counsel. But there is no appearance on behalf of the respondent when the matter is called out today. As a very short issue is involved, list this appeal for final disposal on 2.7.2018. It is made clear that if there is no appearance on behalf of the sole respondent on the said date also, this Court will proceed to decide this appeal on merits.

2. When the appeal is called out today, again

there is no appearance on behalf of the respondent.

3. Heard learned counsel appearing for the appellant. It is pointed out that by the impugned order dated 29.07.2016, the complaint of the appellant stood dismissed on the ground that the complaint had remained unattended before the court below. The learned counsel for the appellant (complainant) submits that the complaint remained unattended only on three dates and that on the last occasion when the impugned order was passed, the counsel had attended the Court but in the second half of the proceedings by which time the complaint along with number of other complaints stood dismissed as a special drive for disposal of complaints was undertaken by the Court below.

4. A perusal of the grounds raised in the petition, show that a case is made out by the appellant for restoration of his complaint and that the complaint deserves to be disposed of on merits. Despite service of notice, the respondent has chosen not to appear before this Court to oppose this appeal.

5. Hence this appeal is allowed. The impugned order dated 29.07.2016 is set aside and the complaint of the appellant herein is restored before the Court below for disposal on merits at the earliest. It is made clear that the appellant and his counsel shall attend to the proceedings before the Court below on dates that may be specified in the proceedings by the Court below.

6. The appellant shall appear before the Court below on 17.07.2018.

7. Appeal is disposed of accordingly.

JUDGE

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