

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
BENCH AT AURANGABAD
47 CRIMINAL APPEAL NO.789 OF 2019

IMPACT CONSTRUCTION THROUGH ITS PARTNER SIDDIQUI MOHD.
HARES S/O. MOHD. MASLIUDDI
VERSUS
BALASAHEB S/O. LAXMAN GHORPADE

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Advocate for Appellant : Mr. Shaikh Faruk V Patel

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CORAM: K.K. SONAWANE, J.

DATED : 2nd DECEMBER, 2019.

ORAL JUDGMENT :

. Heard. Admit. Matter is taken up for final hearing on merit with the consent of learned counsel for the appellant. Despite proper service of notice the respondent-accused refused to accept the same. Therefore, there is no opportunity of hearing of the respondent-accused and appeal is taken up for its adjudication on merit in absence of respondent-accused.

2] It has been contended that the appellant and the respondent/accused had an acquaintance with each other being an cordial relations in between them. The appellant/complainant gave an amount of Rs. 12.50 Lakhs as hand loan to the respondent/accused for domestic problems. It was agreed that the respondent/accused shall refund the amount within six months but the respondent/accused failed to comply with the agreement

and did not repay the hand loan amount within the stipulated period. After continuous insistence on the part of appellant-complainant, the respondent-accused issued a cheque of Rs. 12.50 Lakhs in favour of complainant for discharging his legal liability of hand-loan amount. But the cheque was dis-honoured for lack of sufficient funds in the Bank account. The complainant/appellant issued statutory notice, but did not receive any response from the accused. Eventually, the complainant initiated penal proceeding under Section 138 of the N.I. Act against the respondent-accused before the learned Magistrate at Aurangabad. Pending the proceeding, there were endeavour to secure presence of respondent-accused but all efforts found unavailing. The learned trial court persuaded the appellant-complainant to take steps to secure presence of respondent-accused, but the complainant did not pay any heed to the directions issued by the learned trial court. The matter was also kept for dismissal on several occasions. Eventually the learned trial court proceeded to dismiss the complaint filed by the complainant for want of prosecution, vide impugned order dated 29.5.2017. Dissatisfied with the impugned order of dismissal of complaint, the appellant/complainant preferred the present appeal to redress his grievances.

3] According to learned counsel for appellant, the impugned cheque was given by the respondent-accused in favour of complainant for discharging his legal liability of huge amount. According to appellant, he had attended the court after issuance of process. He was under the impression that his matter is going on and his counsel is taking care of the matter. However, his counsel did not furnish details and remained absent due to which, the learned trial court dismissed the proceeding. The matter

came to be dismissed due to negligence on the part of his counsel. Therefore, the appellant requested to restore the matter for substantial justice.

4] As referred above, the notice of the present appeal was issued to the respondent-accused, but he refused to accept the same. Therefore, this court did not receive any opportunity of hearing of respondent-accused and proceeded further for decision of the appeal in absence of respondent-accused. Admittedly, the matter pertains to huge amount of Rs. 12.50,000/- (rupees twelve lakhs fifty thousand). The cheque was issued by the respondent/accused in favour of complainant/appellant, but the same was dishonoured for lack of funds by the bank authority. The statutory notice was issued by the complainant. In such circumstances, it would be justifiable to afford an reasonable opportunity to the complainant to adduce evidence before the trial court for substantial justice. In case, the opportunity to lead evidence is not granted to the complainant it would cause injustice and prejudice to him. It is worth to mention that the proceeding came to be instituted in the year 2015 and uptill the year 2017, the complainant did not take any steps to secure the presence of the respondent/accused. This negligence on the part of complainant-appellant also cannot be brushed aside while providing reasonable opportunity to him for substantial justice into the matter. Therefore, the circumstances constrain this Court to impose some monetary fetters on the appellant/complainant, in the interest of justice.

5] Accordingly, the appeal stands allowed. The impugned order of dismissal of complaint for want of prosecution passed by the

learned trial court is hereby quashed and set aside, subject to deposit of cost of Rs. 10,000/- by the appellant in the office of High Court Legal Services Sub-Committee, Aurangabad within a period of four weeks from today. In case the applicant fails to deposit the costs within the stipulated period, the present order of allowing the appeal shall stand vacated automatically without further reference to this court and appeal be treated as dismissed.

If the amount of cost is deposited as directed by this court, the proceeding of SCC No. 5711 of 2015 on the file of learned Magistrate be restored at its original stage. After restoration of proceeding before the learned trial court, the applicant shall secure his presence in the proceeding on 14th January, 2020 for further process. The learned trial court shall deal with the matter as expeditiously as possible being a summary proceeding as contemplated under the N.I. Act.

Accordingly the appeal stands disposed of in above terms.

(K.K. SONAWANE)
JUDGE

grt/-