

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO.63 OF 2018

Baliram Bapu Parkhe ... **Applicant**

V/s.

Chairman, Chaitayan Earth ... **Respondent**
Movers Pvt. Ltd.

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Mr.Sandeep S. Koregave, Advocate for the Applicant.
None for respondent no. 1
Mr. A. R. Kapadnis APP for the Respondent/State.

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CORAM : NITIN W. SAMBRE, J.

DATED :NOVEMBER 5, 2019.

P.C. :

1 This is an application for condonation of delay of 7 years and 456 days in preferring an application for leave to appeal. By filing the application for leave to appeal what is sought to be challenged is dismissal of the complaint for the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution by resorting to the provisions of Section 256 of the Code of Criminal Procedure.

2 None for the respondent No.1 despite service.

3 Heard the learned Counsel appearing for the applicant/original complainant. He argued that the complaint was filed alleging the offence punishable under Section 138 of the Negotiable Instruments Act, 1881 on 27/08/2007. Order of issuing process was passed on the very same day. It was challenged by the original accused before the Sessions Court and stay to the proceeding was ordered. On 26/04/2011 , complaint was dismissed for want of prosecution. It is the submission of the learned Counsel for the applicant that instead of challenging Order dated 26/04/2011 before this Court, the Advocate appointed by the applicant had preferred an application for restoration of the complaint along with the application for condonation of delay in filing the restoration application. The said application for condonation of delay came to be rejected by the learned Judicial Magistrate First Class on 26/09/2016. Thereafter, the applicant approached his Counsel and his Counsel thought that the matter needs to be taken up to the Sessions Court for challenging the Order of the learned Judicial Magistrate First Class passed on 26/09/2016. However, ultimately it was revealed that what is required to be challenged is the Order dated 26/04/2011 and that is how the application for leave to appeal is filed along with the instant application.

4 I have considered the submissions so advanced. The delay in preferring the application for leave to appeal is an

inordinate delay. The same is not explained. The reason given is that of filing an application for condonation of delay as well as application for restoration of the complaint before the very same trial Court. Even if this explanation is accepted then also it is seen that the said application for condonation of delay was rejected on 26/09/2016. Thereafter, the applicant has not taken any steps in the matter, for a period of more than one year. Instant application along with the application for leave to appeal came to be preferred in the month of January 2018. Thus, delay of about fifteen months is totally unexplained by the applicant. The conduct of the applicant, as such, cannot be termed as bona fide. The reason, as stated, cannot be construed as a sufficient cause.

5 Application stands rejected.

6 Needless to clarify that if law permits, it shall be open for applicant to take recourse to civil remedy.

(NITIN W. SAMBRE, J.)