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***IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION***

CRIMINAL WRIT PETITION NO.3879 OF 2019

M/s. Sunder Siddhi and Anr. ... Petitioners

Versus

M/s. SGS India Pvt. Ltd. and Anr. ...Respondents

Mr. Abhineet Pange a/w Mr. S. R. Chopade Patil, for the Petitioners.

Mr. V. B. Chavan, for the Respondent No.1.

Mr. P. H. Gaikwad - Patil, A.P.P for the Respondent No.2 - State.

CORAM : REVATI MOHITE DERE, J.

DATE : 28th NOVEMBER, 2019

P.C. :

1. Heard learned counsel for the parties.

2. By this petition, the petitioners have impugned the order dated 4th July, 2018, passed by the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai, by which, the learned Magistrate was pleased to pass an order of 'no cross' as well as the order dated 24th September, 2018, passed by the learned Magistrate, by which the petitioners application for setting aside the order dated 4th July, 2018 of 'no cross' was rejected.

3. Perused the papers. The Respondent No.1 (original complainant) has filed a complaint under Section 138 r/w Section 141 of Negotiable Instruments Act, as against the petitioners in the Court of the learned Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. The said case is numbered as Sessions Case No.113/SS/2016. A perusal of the roznama annexed to the petition shows that the learned Magistrate had granted time to the Respondent No.1 to file his affidavit of evidence, however, the said affidavit of evidence was filed by the respondent no.1 after 7 dates, only on 4th July, 2018. The roznama shows that the matter was adjourned for filing of affidavit of evidence on 16th February, 2017; 15th June, 2017; 29th August, 2017; 14th November, 2017; 10th January, 2018; 5th April, 2018 and 9th April, 2018. The learned Magistrate without ensuring that a copy of the affidavit of evidence was served on the petitioners insisted that the petitioners advocate conduct the cross examination on the very date when the affidavit of evidence was filed i.e. on 4th July, 2018. Since the advocate for the petitioners did not cross examine the respondent no.1, the learned Magistrate was pleased to pass the impugned order dated 4th July, 2018 of 'no cross'. It appears that pursuant to the order of 'no cross', the petitioners advocate filed an application before the learned Magistrate and sought setting aside of the order of 'no cross'. The learned Magistrate vide order dated 24th September, 2018, passed the following

order:-

“Advocate is not ready for evidence no cross hence rejected.”

4. It appears from Exhibit – ‘E’, which is on page 39 of the petition, that the affidavit in lieu of examination-in-chief on behalf of the respondent no.1 (complainant) was served on the petitioners only on 24th September, 2018 and the same is evident from the endorsement made on the said affidavit. The learned Magistrate ought to have ensured that the copy of the evidence was given to the petitioners and also sufficient time was given to go through the same, so as to enable the advocate for the petitioners to effectively cross examine the respondent no.1. The learned Magistrate has clearly acted hastily and as such the impugned orders dated 4th July, 2018 and 24th September, 2018, are quashed and set aside.

5. Learned Counsel for the petitioners states that the petitioners are ready to cross examine the respondent no.1, on the next date given by the trial Court. Statement accepted.

6. As the trial has commenced, the same is expedited. The learned Magistrate to decide the case, as expeditiously as possible and preferably within 12 months from the date of receipt of this order.

7. The Petition is allowed and disposed of in above terms.
8. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.