

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

CRIMINAL APPLICATION (APPA) NO.1094/2018

Kishor Mahadeorao Tambhade .vs. Immense Concrete Pvt. Ltd. Thr.
Director, Chetan Prakash Vispute, Nagpur.

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

Court's or Judge's orders.

Mr. N. R. Saboo, Advocate for applicant.
Mr. Y. Ganoo, Advocate for non applicant.

CORAM : V.M. DESHPANDE, J.
DATED : JANUARY 31, 2019

Heard Mr. Saboo, learned counsel for applicant and Mr. Ganoo, learned counsel for non applicant.

Proceeding filed under Section 138 of the Negotiable Instruments Act was filed by complainant against non applicant. The said was registered as Summary Criminal Case No.256/2015. According to the complaint, son of the complainant and Chetan Vispute, Director of non applicant, were friends. According to the complaint, said Chetan Vispute informed that accused Immense Concrete Pvt. Ltd is engaged in the business of plots and construction and if amount is deposited with the said Company within one year, that amount will double. On this assurance, as per the complainant, he invested Rs.15,00,000/- with accused company under an agreement. However, said company failed to repay the amount as per agreement. Repeated requests were made and ultimately cheque for Rs.15,00,000/-, drawn on

Yes Bank was issued in favour of complainant by accused company. The said was deposited. However, it was not honoured. Therefore, notice dated 11.09.2015 was issued. In spite of that, amount was not repaid. Hence, complaint was lodged. Learned Judge of Court below vide judgment dated 24.09.2018, dismissed the complaint and acquitted accused-Immense Concrete Pvt. Ltd., through Director Mr. Chetan Prakash Vispute.

Admittedly, Immense Concrete Pvt. Ltd. is registered under the Companies Act, 1956. According to the complainant, amount of Rs.15,00,000/- was given to said company.

Without going through merits or demerits of the case, in my view, present proceedings are required to be dismissed on account that according to the complaint, cause of action for lodging the complaint is notice dated 11.09.2015 (Exh.-31). Perusal of said notice would show that it was addressed to Chetan Prakash Vispute in his personal capacity. Notice was not issued to accused-Immense Concrete Pvt. Ltd., a registered company. Since mandatory notice contemplated under the Negotiable Instruments Act is not given to accused-company, the complaint itself must fail.

In that view of the matter, the application is rejected. Consequently, the appeal is also dismissed.

JUDGE