

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

CRIMINAL WRIT PETITION NO. 933 OF 2020

M/s. Extreme Coating Pvt. Ltd. & ors. ..Petitioners.

v/s.

Jotun India Pvt. Ltd. & anr. ..Respondents.

Ms. Sushmitha Sherigar, advocate for petitioners.

Mr. Jamshed Ansari, advocate for respondent No. 1.

Ms. P.P. Shinde, APP for State.

CORAM : SMT. SADHANA S. JADHAV,J.

DATE : MARCH 13, 2020.

P. C. :

1 Heard the learned Counsel for the petitioners and the learned APP for State.

2 Rule. Rule made returnable forthwith with the consent of the parties.

3 The applicant herein impugns the order dated 17/12/2019 passed by the Additional Sessions Judge, Greater Bombay, thereby rejecting the application seeking condonation of delay in filing revision application.

4 The applicant was challenging the order of issuance of

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process passed by the Metropolitan Magistrate 33rd Court, Ballard Pier, Mumbai vide order dated 28/3/2018. The returnable date was 21/6/2018.

5 The learned Counsel for the Petitioners submits that on 12/6/2018 the Petitioners had received summons issued by the Metropolitan Magistrate, 33rd Court, Ballard Pier, Mumbai. However, the revision is filed on 2/11/2018.

6 Perused the application seeking condonation of delay. The reasons assigned by the applicants for seeking condonation of delay is that the applicants are permanent resident of Delhi and he could not visit Mumbai to file the revision application due to his business schedule and as a result of the same, he consumed time to arrange for an advocate to file the revision application. Delay was of 120 days. The learned Revisional Court has rightly considered that there is no plausible explanation offered by the applicants for condoning the delay.

7 It is considered that the summons was served upon the applicants on 12/6/2018 and the period of 90 days would commence from 12/6/2018. In view of this, revision application ought to have been filed within 90 days(3 months), which would be 12/9/2018. There is no documents placed on record to even

remotely indicate that the business schedule of the applicants were such that they could not have arranged for an advocate to file revision application. Therefore, learned Judge had rightly observed that the reasons pressed into service are too vague to be accepted.

8 Learned Counsel for the original complainant has placed reliance upon the Judgment and order of this Court in the case of **Sunil Bhai Sheth v/s. M/s. Agricore Commodities Pvt. Ltd. & ors.** (Criminal Writ Petition No. 865 of 2019), where similar reasons were assigned for seeking condonation of delay. In the said case, reasons assigned by the applicant was that the accused- applicant was resident of Gujrat. This Court had observed that being resident of Gujrat is not an excuse for condoning the delay.

10 No doubt, this Court had also considered the writ petition on merits of the case and the said Writ Petition was rejected on merits.

11 The learned Counsel for the respondent submits that in view of the fact that the application seeking condonation of delay is rejected, no case is made out for quashing of order of issuance of process.

12 As against this, learned Counsel for the Petitioners submits that irrespective of the merits of the case, the Petitioners deserve an opportunity to challenge the order of issuance of process under section 138 of N.I. Act.

13 The alternative remedy would be to file petition under section 482 of the Code of Criminal Procedure, 1973 seeking relief of quashing of issuance of process. However, since the Petitioners had filed revision, it would be appropriate in the interest of justice to remand the matter for re-consideration and allow the Petitioners to contest the subjective order on merits, upon depositing a cost of Rs. 10,000/- before the Sessions Court. The cost to be deposited within 3 weeks. The parties shall appear before the Sessions Court on 3rd April, 2020. Learned Sessions Court shall consider the revision application on its own merits.

14 With these observations, Rule is made absolute in the above terms. Writ Petition is disposed of accordingly.

[SMT. SADHANA S. JADHAV, J.]