

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 173 OF
2019

Umakant Ganpatrao Devane .. Applicant
[original
complainant]

Versus

Maula Sab s/o. Afzal Pathan .. Respondent
[original
accused]

Mr.Ram S. Shinde, Advocate for the applicant.
Mr.B.M. Dhanure, Advocate for the respondent.

CORAM : SURENDRA P. TAVADE, J.
RESERVED ON : 23.09.2021
PRONOUNCED ON : 29.09.2021

O R D E R :-

01. The original complainant in STC Case No.479 of 2014 has filed this application for leave to file appeal. The applicant had filed complaint against the respondent under section 138 of the Negotiable Instruments Act, before the Judicial Magistrate, First Class, Udgir. At the time of filing the complaint, the applicant had submitted an application for condonation of delay in

filing the complaint. Said application was not decided by the Trial Court. In view of the order of this Court in Nikumbh Dairy Ltd. Vs. State of Maharashtra, 2007 ALL MR (Cri.)1097, the Trial Court observed that the application for condonation of delay can be considered along with other issues at the time of final judgment. Therefore, the complaint came to be registered. The applicant led his evidence. The respondent was also given opportunity to lead evidence. But, it appears that he did not lead any evidence. The Trial Court held that the offence under section 138 of the NI Act is proved against the respondent, but the Trial Court held that the complaint was barred by limitation, as the applicant did not explain the delay in lodging the complaint. Therefore, the complaint came to be dismissed.

02. In view of the above facts the learned Counsel for the applicant submits that the Trial Court has not considered the evidence led by the applicant for condonation of delay in proper perspective. The Trial

Court has simply held that the applicant had cured on 23.07.2014 and he had 13 days to file complaint, but he did not take any steps to file the complaint. The said observation is not proper and correct.

03. On the other hand, learned Counsel for the respondent submits that except production of medical certificate, no evidence is led by the applicant to prove sufficient cause for delay in lodging the complaint. Said aspect is properly considered by the Trial Court.

04. It is case of the applicant that he had issued notice under section 138(b) of the NI Act. But, he did not receive postal acknowledgment showing service of notice of respondent. Therefore, there was delay. Ultimately, the applicant presumed that notice must have been received by the respondent and he filed complaint, but there was delay in lodging complaint. The applicant has given two fold reasons for condonation of delay. One is that he did not receive information of service of

notice on record from postal department and secondly he was not feeling well in the last week of July, 2014 due to Hepatitis-B. The Trial Court has not properly considered the evidence on record. Therefore, the applicant must get opportunity to place his evidence before the Court to appreciate condonation of delay. Therefore, the applicant must be allowed to file appeal. With this I pass following order :-

O R D E R

- (i) The application is allowed.
- (ii) Leave granted to file appeal.
- (iii) The Registry is directed to register the appeal.

[SURENDRA P. TAVADE,J.]