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

CRIMINAL APPLICATION NO. 593 OF 2013

INDIA CEMENTS CAPITAL LTD

....APPLICANT

V/s.

**THE STATE OF MAHARASHTRA
AND ORS**

.....RESPONDENTS

Mr. Manish Bohra i/b A. S. Khan and Associates for the applicant
Ms. A. A. Takalkar APP for the State
Mr. Hitesh P. Vyas for respondent no. 3

CORAM : NITIN W. SAMBRE, J.

DATE: NOVEMBER 18, 2021.

P.C.:

1] Heard. Leave granted.

2] Learned APP appears for respondent no. 1, Mr. Hitesh P. Vyas
appears for respondent no. 3 and waives service.

This application is pending since 2013 before this Court.

3] Vide order dated 21/09/2013, Court of Metropolitan Magistrate acquitted the respondent-accused of offence punishable under Section 138 r/w 141 of Negotiable Instruments Act.

4] Complaint case came to be initiated by the applicant-appellant against the respondent as the cheques issued were dishonoured.

5] It appears from the Roznama produced at page 15 that some of accused respondents were served, however, some remained unserved. As such, complaint, for want of service on unserved respondents came to be dismissed resulting into acquittal of the respondent. It is brought to my notice that respondent company and some of its directors were already served and as such, applicant-appellant has every intention to pursue the complaint. It is further assured that in case if the complaint is restored, respondent-directors shall be served afresh within period of three months. Said statement made on instructions is accepted as an undertaking to this Court.

6] In the aforesaid background, case for showing indulgence is

made out.

7] Order impugned, dismissing the complaint, dated 21/09/2013 is hereby quashed and set aside. Complaint stood restored to file of learned Magistrate. Applicant shall appear before the Magistrate on 13/12/2021. In view of order of Magistrate issuing process to the respondent-accused, it shall be the responsibility of the applicant to complete the service of the accused persons but for respondent no. 3 who is represented before this Court by learned counsel Mr. Hitesh P. Vyas. If the applicant fails to complete the service as observed herein above, within three months as undertaken, the Magistrate shall be at liberty to pass appropriate orders including that of directing acquittal of accused persons.

8] Since respondent no. 3 has already appeared in this case, it is observed that respondent no. 3 has waived notice even of the proceedings which were restored to the file of Metropolitan Magistrate and no fresh summons is required to be served.

9] The above order is subject to payment of cost of Rs. 10,000/- to be paid to High Court Bar Library within period of two weeks from today, acknowledgment of which be produced before the Court of Metropolitan Magistrate before the next date of hearing failing which the order of restoration of complaint be not given effect to.

10] Application stands disposed of.

[NITIN W. SAMBRE, J.]