

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

CRIMINAL APPEAL NO. 581 OF 2022

Parmeshwar Rambhau Golhar
Died through his L.Rs.
Dnyaneshwar Parmeshwar Golhar

.. Appellant

Versus

Prakash Mahindra Gaikwad

.. Respondent

Mr. V. M. Chate, Advocate for the Appellant.

CORAM : KISHORE C. SANT, J.

DATED : 05th DECEMBER, 2022.

P. C. :-

1. Heard learned advocate for the appellant.
2. In application for leave to file appeal, notice was issued. In spite of service of notice, none appeared for respondent and this Court had allowed the application and directed the office to register the appeal. Even in the appeal, notice was served upon respondent. However, it is seen from the record that, in spite of service of notice, none appears for respondent.
3. In this appeal, a challenge is raised to an order passed by the learned J.M.F.C. dated 01.04.2021 dismissing the complaint under Section 256 of the Code of Criminal Procedure (for short "Cr.P.C.") for want of steps. The complaint was filed under the provisions of Section

138 of the Negotiable Instruments Act (for short “N. I. Act”). During the pendency of the complaint the original complainant that is Parmeshwar Golhar died. When this fact was intimated to the Court, the Court on the very day dismissed the complaint for want of steps. Thus, the sole legal heir is before this Court challenging the impugned order.

4. Considering that the heirs of the complainant in the proceedings filed under Section 138 of the N. I. Act can very well proceed with the complaint, a chance is required to be given to prosecute the complaint. Looking to the fact that the amount of the cheque is Rs. 8,00,000/- (Rs. Eight Lakh only), hence the following order.

ORDER

(I) The appeal is allowed.

(II) The impugned order dated 01.04.2021 passed by the learned J.M.F.C., Ashti, District Beed is quashed and set aside. The complaint S.C.C. No. 75/2019 is restored to its file.

(III) After restoration, the appellant shall take necessary steps.

(IV) The appeal is disposed of.

(KISHORE C. SANT, J.)

PS.B.