

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

CRIMINAL APPEAL NO.673 OF 2015

DEVGIRI NAGRI SAHAKARI PATH-SANSTHA MARYADIT, AURANGABAD
VERSUS
TAUSIF KHAN S/O JAMSHER KHAN PATHAN

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Advocate for Appellant : Mr. Gaikwad Satish A.

Advocate for Respondent : Mr. S. A. Shaikh

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CORAM : KISHORE C. SANT, J.

DATE : 17th OCTOBER 2022.

Per Court :

Heard.

1. This appeal is filed by the Appellant for final disposal considering it is only against the order, dismissing complaint for default. The complaint is lodged for the offence under Section 138 of the Negotiable Instruments Act.

2. The Advocate for the Appellant has taken this Court through Roznama. From the Roznama it appears that the matter was on board dated 16.06.2014, it was adjourned to 21.07.2014. Thereafter

adjourned to 07.08.2014 and 03.09.2014. On these three dates, the Presiding Officer is shown to be on leave. On 04.10.2014, Complainant and his Advocate were present and order passed on Exhibit-1 for evidence and the case was adjourned to 14.10.2014. On 14.10.2014, Complainant was absent, his Advocate was also absent and the case was adjourned to 16.10.2014 i.e. immediately after two days for passing order of dismissal.

3. Learned Advocate submits that thus on 14.10.2014 and even on 16.10.2014, Complainant and his Advocate could not remain present and hence they could not get the knowledge that immediately after two days the matter was fixed for dismissal for default. On 16.10.2014, impugned order came to be passed. His further submission is that the Appellant is the Co-operative Society and cheque was issued for Rs.2,62,658/- towards discharge of loan liability. He submits that the money of the Society in fact is the money of the depositors of the Society. If the bank is put to loss, it is the loss of the members of the bank. He therefore prays for quashing and setting aside the impugned order dated 16.10.2014 and prays for restoration of complaint i.e.

S.C.C. No. 7317/2013 to its original status. He undertakes that henceforth, there will be not a single default on the part of the Complainant and he would take effective steps for early disposal of the complaint.

4. The learned Advocate for Respondent No.2 opposes the appeal stating that Complainant was not vigilant enough to proceed with the complaint. The Court has considered consistent absentee of the Complainant and therefore has rightly dismissed the complaint.

5. Considering the submission, it would be appropriate to impose some conditions upon the Appellant-Original Complainant. To balance the equities, it is required to compensate the Respondent-Original Accused by directing to pay some amount towards compensation. Hence the following order.

ORDER

- (i) The impugned order dated 16.10.2014 passed by the learned 11th Judicial Magistrate First Class, Aurangabad is quashed and set aside.

- (ii) The complaint bearing S.C.C. No.7317/2013 dismissed by the learned 11th Judicial Magistrate First Class, Aurangabad is restored to its file.
- (iii) The order is subject to payment of cost of Rs.10,000/- (Rupees ten thousands) to be deposited in the trial Court within four weeks from today. The Accused/Respondent is at liberty to withdraw the said amount.
- (iv) The Complainant/Appellant shall not seek any adjournment on any count and he will diligently prosecute the complaint. The Accused/Respondent also will not commit any default.
- (v) With this, the Criminal Appeal is disposed off.

[KISHORE C. SANT, J.]