

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
942 CRIMINAL APPEAL NO.736 OF 2022
M/S. GREEN APPLE CONVERTORS THROUGH ITS
PROPRIETOR PIYUSH ONKARNATH BHANDARI
VERSUS
M/S. SHRIRAM PAPER PRODCT THROUGH ITS PROPRIETOR
NILESH NARAYAN RANATE**

Mr. H. A. Bajaj, Advocate for the appellant
Mr. R. L. Kute, Advocate for the respondent

CORAM : KISHORE C. SANT, J.

DATE : 18th October, 2022

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1. Heard both the sides.
2. Looking to the nature of the appeal that it is against the order dated 23-09-2021 dismissing the complaint in default. The matter is taken up for final disposal.
3. The order impugned is order dated 23-09-2021 passed by the learned JMFC, Sangamner, Dist. Ahmednagar in SCC No. 108 of 2014. By way of impugned order the complaint filed for an offence punishable under Section 138 of the Negotiable Instruments Act is dismissed. The learned advocate for the appellant pointed out from the roznama that on 24-08-2021 the case was adjourned to 08-10-2021. Roznama further shows that suddenly the matter was taken up on 23-09-2021 in a special drive without any notice to the parties. It thus, appears

that there was no reason to have notice to the parties of the said date.

4. Learned advocate for the respondent vehemently opposed the appeal saying that even on the earlier dates the complainant was absent and he was not taking steps in the matter. It is true that it appears from the roznama that on 10-07-2019, 09-08-2019, 07-10-2019, 11-12-2019, 22-01-2020, on all these dates the complainant was absent. Thereafter, because of the covid protocol the matter was not taken up. He said that complainant also should have been vigilant in prosecuting the case though the accused is remaining present. It is because of the absence of the complainant the matter is not being proceeded. He thus, prays for rejecting the matter.

5. Considering the submissions and the position as stated above, this court is of the opinion that it would be proper in the interest of justice to restore the complaint to its original position. It is true that case is of 2014 and till 2019 no much progress is shown in the matter. However, since it is under Section 138 of the NI Act and considering that it would certainly cause hardship even to the accused if the compliant is restored. Interest of justice would meet by directing the complainant to deposit Rs.5,000/- in the trial court as a pre-condition for restoration of the complaint. The amount of Rs.5,000/- shall be paid thereafter to the accused.

6. The learned trial court to make endeavour to complete the proceeding and to decide the complaint as early as possible and preferably within a period of six months from the date receipt of this order. The parties shall not seek any adjournment unless for exceptional reasons and attend the every date. The appeal stands disposed off in above terms.

[KISHORE C. SANT, J.]

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