

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

CRIMINAL WRIT PETITION NO.3532 OF 2019

M/s. Daulat Exim Pvt. Ltd.

...Petitioner

Versus

A.D. Moddie Consultants Pvt. Ltd.

Through Amit Jhaveri and Anr.

...Respondents

Mr. Aabad Ponda, Senior Counsel a/w Mr. Mithilesh Mishra, for the
Petitioner.

Mr. Amit Jhaveri, Respondent No.1 in person.

Mr. A. D. Kamkhedkar, A.P.P for the Respondent No.2– State.

CORAM : REVATI MOHITE DERE, J.

DATE : 9th MARCH 2022

P.C. :

1. Heard learned senior counsel for the petitioner, respondent
No.1 who appears in person and the learned APP.

2. By this Petition, the Petitioner has impugned the order dated
28th August 2018, passed by the learned Metropolitan Magistrate, 28th
Court, Esplanade, Mumbai, in C.C. No.3526/SS/2012

3. Learned Senior Counsel for the petitioner submits that vide the impugned order dated 28th August 2018, the learned Judge has foreclosed the arguments of the complainant i.e. the petitioner. He submits that the reason for foreclosing of the arguments of the complainant i.e. the petitioner was that the matter was adjourned for arguments on eight occasions and on 28th August 2018, despite the matter being fixed for arguments, the complainant as well as his advocate were absent. He submits that the advocate in question, who was appearing for the complainant could not remain present on the earlier dates as he was arrested in connection with an offence and was in custody from 3rd July 2018 to 16th July 2018. He submits that due to his incarceration, he was not in a position to resume work immediately. He submits that no doubt the same was not informed to the learned Judge, however, learned senior counsel for the petitioner has produced a copy of the bail order enlarging the advocate in question on bail vide order dated 16th July 2018.

4. The respondent No.1 who appears in person submits that there was no bar for the complainant i.e. the petitioner to inform the Court of the said fact i.e. of detention of his advocate. He submits that even after the

concerned advocate was released on bail, he did not appear in the said case. He submits that in the event the Court is inclined to allow the petition the hearing of the case be expedited.

5. Perused the papers in particular the impugned order dated 28th August 2018. The said impugned order reads as under:-

“28.08.2018 Matter is fixed for arguments before me today.
It is adjourn for argument for 8 occasion.
Today also complainant absent his advocate present.
Accused and advocate present.
Hence the argument of the complainant is deemed over.
Matter for adjourn for argument of accused on next date
Case Adjourn for : FOR ARGUMENTS 04.09.2018”

6. In view of the stay granted by this Court vide order dated 7th August 2019, the aforesaid matter is still pending in the trial Court. It appears that on earlier occasions prior to passing of the impugned order i.e. on 5th July 2018; 17th July 2018; 23rd July 2018; 30th July 2018 and 10th August 2018, the concerned advocate did not appear before the trial Court. It appears that the petitioner’s advocate was in custody from 3rd July 2018 to 16th July 2018 and was released on bail vide order dated 16th July 2018. It appears that the petitioner’s advocate thereafter being shaken by his

arrest did not appear on the subsequent dates. No doubt the same should have been brought to the notice of the learned Judge, however, the same was not informed. Since the matter is posted for arguments, it is necessary in the interest of justice to permit the petitioner's advocate to complete his arguments by directing the learned Judge to hear the concerned advocate appearing for the petitioner.

7. Accordingly, the petition is allowed and the impugned order 28th August 2018, passed by the learned Metropolitan Magistrate, 28th Court, Esplanade, Mumbai, in C.C. No.3526/SS/2012, closing the arguments of the complainant i.e. the petitioner, is quashed and set aside

8. The Petition is allowed in the aforesaid terms and is accordingly disposed of.

9. Both the petitioner and his advocate and the respondent No.1 to appear before the learned Judge on 5th April 2022 at 11:00 a.m. after which, the learned Judge to give dates convenient to him. The learned Judge to hear the arguments of the advocate for the complainant i.e. the petitioner as

well as the respondent No.1, as expeditiously as possible and in any event on or before 30th June 2022.

10. Both the petitioner as well as the respondent No.1 to co-operate with the learned Judge in the expeditious disposal of the case.

11. All concerned to act on the authenticated copy of this order.

REVATI MOHITE DERE, J.