

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

CRIMINAL APPLICATION (APL) NO. 941 OF 2022

M/s Shivani Traders, through its
 Proprietor Arun Chandrabhanji Ladhi,
 aged about 45 years, Occupation –
 Business, R/o Shastri Ward,
 Hinganghat, Tah. Hinganghat, District –
 Wardha.

... APPLICANT_

VERSUS

A.K. Corporation, through its
 Proprietor, Ashokkumar
 Basudeoji Saraf, aged about 59
 years, occupation – Business, R/o
 Saraf Bhavan, Shiv Nagar,
 Wardha, Tah. And District –
 Wardha.

... ..NON-APPLICANT

Shri A.S. Dhore, Advocate for the applicant.
 Shri Nitin Lalwani, Advocate for the non-applicant.

CORAM : VINAY JOSHI, J.
DATED. : 23.08.2022.

ORAL JUDGMENT :

Heard. **ADMIT.** The matter is taken up for final hearing by consent of both parties.

2. The applicant who is convicted in Summary Criminal Case No.3316 of 2013 for the offence punishable under Sections 138 of the Negotiable Instruments Act, has preferred an appeal challenging the conviction, however the appeal was dismissed in default, hence the parties are before this Court.

3. As regards to the facts are concerned, there is no dispute as the appeal against the conviction came to be dismissed in default, which is also reflected in the impugned order dated 30.06.2022. The learned Counsel appearing for the non-applicant (original complainant) conceded the legal position that the appeal against conviction cannot be dismissed in default. Obviously, if the applicant remains absent, the learned Trial Judge ought to have taken coercive steps or appointed *amicus curiae* or would have disposed the appeal on its own merits. Therefore, it is but necessary, to set aside the impugned order and direct the learned Appellate Court to decide the appeal afresh as permissible in law.

4. The learned Counsel appearing for the applicant undertakes to appear and proceed with the appeal on the given date.

5. In view of that application is allowed. The impugned order dated 30.06.2022 passed in Criminal Appeal No.63 of 2015 is hereby quashed and set aside. The Criminal Appeal is restored on the file of the Appellate Court. Both parties undertake to appear before the Appellate Court on 07.09.2022, without any notice. The applicant shall go on with the appeal on 07.09.2022 or within the next date which would be fixed by the Appellate Court. The Appellate Court is directed to decide the appeal within three months from 07.09.2022.

6. The application stands disposed of in above terms.

(VINAY JOSHI, J.)

Trupti