

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

CRIMINAL APPEAL NO. 74 OF 2023

Saraswati Gramin Bigar Sheti Sahakari Pathsanstha
Maryadit, Nimaj, Tal. Sangamner,
Through its Manager
Sudam Dnyanoba Gawande

.. Appellant

Versus

Vilas Shivram Gunjal and another

.. Respondents

Mr. K. N. Shermale, Advocate for the Appellant.
Mr. P. N. Kutti, APP for Respondent No. 2.

CORAM : KISHORE C. SANT, J.

DATED : 06th APRIL, 2023.

P C. :-

. Heard.

2. In spite of service, none appears for the respondent No. 1.

3. The order challenged in this appeal is an order dated 24.05.2022 passed by the learned A.C.J.M., Sangamner in S.C.C. No. 1544/2017 below Exh. 1 thereby dismissing the complaint in default as the complainant was absent. It is observed in the order that, the complainant was absent from 13.04.2022. Thus, the Court has passed the order within one and half months. It is seen from the record, as a matter of fact, the complaint was referred for settlement in

the Lok Adalat that was held on 07.05.2022. However, the settlement could not be arrived at between the parties and the matter was posted to 24.05.2022 and on the very day the matter came to be dismissed. From the roznama it is seen that, it was expected of the learned Court to give one more opportunity to the appellant/original complainant since this is a case under Section 138 of the Negotiable Instruments Act and the complainant happens to be a co-operative society. The cheque was issued for repayment of the loan amount. It needs to be considered that the amount of the society is the amount of its members and loss to the society is ultimately loss to its members.

4. Considering the fact that, in spite of service, respondent No. 1 has not appeared before this Court, this Court is inclined to allow the appeal. Hence, the following order.

5. The criminal appeal is allowed.

6. The impugned order dated 24.05.2022 passed by the learned acting Chief Judicial Magistrate, Sangamner is quashed and set aside.

7. S.C.C. No. 1544/2017 dismissed by the learned acting Chief Judicial Magistrate, Sangamner stands restored to its original status.

8. Since the complaint is of the year 2017, it is expected of the learned Trial Court to decide the complaint as early as possible and preferably within a period of six (06) months from the receipt of this order.

9. The criminal appeal is disposed off.

(KISHORE C. SANT, J.)

PS.B.