

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT PARTY
NO. 12 OF 2023

M/s Kuber Steel Traders,
Through its authorized partner,
Mr. Jitendra Ramniwas Garg,
Age : 44 years, Occ. : Business,
R/o.: Office at C-31, Additional M.I.D.C.,
Aurangabad Road, Jalna, Tq. and
Dist. Jalna

... Applicant/Appellant
(Ori. Complainant)

VERSUS

M/s Yash Enterprises,
(A Proprietorship firm, Through its Proprietor
Mr. Faqraddin s/o Hatimbhai Rangwala)
Age : 59 years, Occ. : Business,
R/o. : Yash Steel & Cement, Kundle Patil
Corner, Sinhagad Road, Vadgaon Dhairy,
near Hotel Abhiruchi, Pune, Dist. Pune

... Respondent
(Ori. Accused)

WITH

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...
Mr. Swapnil S. Patil – Advocate for Applicant/Appellant
Mr. Mayur G. Deokate – Advocate for Respondent
....

CORAM : SANDIPKUMAR C. MORE, J.
DATE : 27th September, 2023

ORDER :

1. Both these applications are filed by the applicant i.e. original complainant in S.C.C. No.1018 of 2013 and S.C.C. No.888 of 2013 to challenge common order and judgment dated 11th January, 2023 in Criminal Appeal Nos.5 of 2021 and 6 of 2021 passed by the Additional Sessions Judge – 5, Jalna (hereinafter referred to as “*learned Appellate Court*”).

2. According to the applicant – original complainant, there was business transaction between itself and respondent – firm i.e. original accused and in that connection the disputed cheques were issued in both the cases, which were subsequently dishonored and therefore the concerned Magistrate i.e. Judicial Magistrate First

Class – 4, Jalna (hereinafter referred to as “*learned Trial Court*”) had convicted the respondent – firm initially in the cases mentioned above but, thereafter the learned Appellate Court set aside the conviction and acquitted the respondent – firm from the charge under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “*the N.I. Act*”) in both cases.

3. Learned Counsel for the applicant – original complainant submits that, it was not in dispute that there was business transaction between the applicant and respondent and out of those transaction the disputed cheques were issued. He pointed out that, the learned Trial Court had convicted the respondent but the learned Appellate Court acquitted the respondent by observing that “the present applicant suppressed the material facts and did not produce on record ledger account in respect of respondent – firm for the year 2012”. According to him, the said account extract was very much on record and it was also observed by the learned Trial Court.

4. On the contrary, learned Counsel for respondent – firm strongly opposed the submissions made on behalf of the applicant and contended that the amount of cheques was not legally

enforceable debt. According to him, applicant – complainant failed to show from the account extract as to how the amount for delayed period was calculated by it. He referred certain admissions given by the applicant – complainant wherein he had admitted that there were no dues. He further pointed out that, the applicant – complainant also accepted that he had already received the amount of Rs.5.5 crore. With these submissions the learned Counsel for respondent – firm claimed rejection of both these applications.

5. Heard rival submissions and also perused the documents on record. Admittedly, the learned Appellate Court has reversed the judgment of learned Trial Court and acquitted the respondent – original accused from charge under Section 138 of the N.I. Act in both the cases. Though there are certain admissions on the part of complainant – firm and on that basis the learned Appellate Court came to the conclusion that the applicant could not establish that the disputed cheques were issued for discharge of legally recoverable debt. However, it is also significant to note that on the basis of same evidence the learned Trial Court had convicted the respondent – firm. As such, there is no concurrent finding by both

the Courts below about the guilt of respondent – accused. In fact there are contrary views taken by the Courts below. Under such circumstances and irrespective of submissions made on behalf of rival parties, I am of the opinion that fresh consideration is required by giving opportunity to the applicant in view of the contrary findings recorded by both the Courts below. As such, both these applications of the applicant – original complainant are hereby allowed in terms of prayer clause 'B'. The appeals of the applicant be registered after removal of office objections, if any.

[SANDIPKUMAR C. MORE]
JUDGE

LATER ON

6. Learned Counsel for applicant in both these applications requested for continuation of interim relief granted by this Court vide order dated 10th February, 2023.

7. Learned Counsel for respondent though opposed for the same, but requested for withdrawal of periodical interest on the aforesaid amount. However, the appeals are yet to be registered and after registration of the same, certain arrangement can be

done about the amount, which is deposited by the respondent in learned Additional Sessions Court at Jalna as well as this Court. Till then, the aforesaid interim relief is continued.

[SANDIPKUMAR C. MORE]
JUDGE