

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

CRIMINAL APPEAL NO.209 OF 2023

**RAM TARA TRADING CORPORATION THROUGH ITS PARTNER KALASH
KULBHUSHAN AGRAWAL**

VERSUS

**YUVRAJ CONSTRUCTION THROUGH ITS PROPRIETOR YUVRAJ
SHARAD MULEY AND ANOTHER**

...

**Advocate for Appellant : Mr. R. N. Chavan h/f Mr. V. A.
Bagdiya**

...

CORAM : R.M. JOSHI, J

DATE : JULY 06, 2023

PER COURT :

1. Appellant is original complainant in SCC No. 2552/2015 filed against accused / Respondent under Section 138 of the Negotiable Instruments Act. By passing order dated 05.07.2022, the said complaint was dismissed for want of prosecution.

2. Learned Counsel for the Appellant states that on account of miscommunication between the complainant and his Advocate he could not remain present before the trial Court. He, therefore, seeks indulgence in the interest of justice.

3. Respondent/Orig. Accused in spite of service of notice failed to remain present in this proceedings,

which indicate that they are not interested in objecting prayer made by the Appellant.

4. Appeal memo clearly states that Appellant has taken specific plea that he was not aware about the fact that the complaint was posted for evidence and delay has occurred on account of non-communication with his Advocate. There is no denial of the said fact from Respondent/Accused.

5. In the interest of justice and to give an opportunity to the complainant to substantiate his case before trial Court, the impugned order dated 05.07.2022 passed by learned JMFC, Aurangabad in SCC No. 2552/2015 is restored to file of learned JMFC. Learned trial Court to ensure presence of accused by adopting procedure as per law. It is clarified that if there is any delay of the said proceedings attributable to the complainant, it is open for the trial Court to pass appropriate order as per law. Since this complaint is more than 5 years old, learned trial Court to decide the same within a period of six months from the date of knowledge of this order.

(R.M. JOSHI, J.)

Malani