

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

**910 APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY
NO.52 OF 2023**

**MOHD. FARUKH MOHD. RAFIQ BAGWAN
VERSUS
NAJIM RAEES KURESHI (KELEWALA)**

...
Mr. R.S. Wani, Advocate for the applicant.

...

CORAM : SANDIPKUMAR C. MORE, J.

DATED : 26th September 2023.

ORDER:-

1. The office note shows that notice to the respondent is deemed to be served since it was affixed on the gate of the Go-down. It further appears that the respondent tried to avoid the service. As such, the respondent is treated as served.
2. Heard learned Counsel for the applicant.
3. It appears that the applicant's complaint under Section 138 of the Negotiable Instruments Act was dismissed for default in the first session. However, it is further evident that the applicant/complainant had moved an application for restoration of complaint in the second session itself, but the said application was rejected for want of any specific provision for recalling the earlier order of dismissal.

4. It is significant to note that the matter was not heard on merit, but in the order dated 08.02.2023 it was specifically observed that how the applicant/complainant remained continuously absent. Under such circumstances, I am of the opinion that the application for leave to appeal needs to be allowed since the complaint of the applicant was not disposed of on merit. However, considering the conduct of the applicant/complainant certain cost needs to be imposed. As such, the application stands allowed and leave is granted to the applicant to file appeal subject to deposit of cost of Rs. 1000/- to be paid to the Government Pleader's Library, High Court, Bench at Aurangabad within the period of one week. After deposit of cost, appeal of the applicant be registered.

(SANDIPKUMAR C. MORE, J.)