

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

**931 APPLICATION FOR LEAVE TO APPEAL BY PRIVATE PARTY  
NO.54 OF 2022**

VAISHALI KRUSHI SEVA KENDRA, SANGAMNER THROUGH  
ITS PROPRIETOR AKSHAY SAHEBRAO SHINDE  
VERSUS  
KANIFNATH KRUSHI SEVA KENDRA, TAKLIMIYA THROUGH  
ITS PROPRIETOR DADASAHEB GORAKSHANATH KOLSE AND  
ANOTHER

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Mr. K.N. Shermale, Advocate for the applicant.  
Mr. Subham Pawar, Advocate holding for Mr. R.R. Karpe,  
Advocate for respondent No.1.

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**CORAM : SANDIPKUMAR C. MORE, J.**

**DATED : 13<sup>th</sup> October 2023.**

**ORDER:-**

1. Heard rival submissions.
2. The applicant/original complainant is seeking leave to file appeal against dismissal of her complaint bearing S.C.C. No. 1547/2018 filed under Section 138 of the Negotiable Instruments Act Act recorded by the concerned Additional Chief Judicial Magistrate, Sangamner vide order dated 08.03.2022.
3. The learned Counsel for the applicant submits that the case was not fixed for taking steps against the accused, but it was for service report of the accused against whom summons was issued. He pointed out that the case was also transferred from one Court to another Court on 07.07.2021 and after such transfer there was no notice to the applicant/complainant.

4. On the contrary, learned Counsel for the respondent/accused strongly opposed the application on the ground that the concerned Magistrate i.e. Addl. Chief Judicial Magistrate (Court No.2), Sangamner had specifically observed that sufficient opportunity was given to the complainant, but he failed in taking steps.

5. However, it is significant to note that prior to its dismissal, the aforesaid case was transferred from one Court to another Court vide order of District Judge dated 31.05.2021 on 07.07.2021. The Roznama dated 07.07.2021 produced on record clearly indicates the same. Further, it is also necessary to intimate both the parties about such transfer of case from one Court to another. The order dated 08.03.2022 does not reflect anything that such notice on transfer was issued to the parties. Moreover, on the said date the matter was not fixed for taking steps by the complainant, but it was for receiving the report of summons issued to the respondent/accused. As such, arguable case is made out by the applicant/complainant, and therefore, the application stands allowed in terms of prayer clauses (A) and (B). The appeal be registered after removal of office objections, if any.

6. Application is accordingly disposed of.

**(SANDIPKUMAR C. MORE, J.)**