

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

APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO.49 OF 2023

MUKUND ARUN MANSUKHE

VERSUS

SUNIL ASARAM AMBEKAR PROP. HARI OM GENERAL STORES

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Advocate for Appellant : Mr. S. R. Wakale

Advocate for Respondents : Mr. Z. H. Farooqui h/f Mr.
N. V. Gaware

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CORAM : R.M. JOSHI, J

DATE : JULY 06, 2023

PER COURT :

1. This application takes exception to the order dated 04.07.2019 passed in S.C.C. No. 161 of 2018. The order impugned shows that after filing of the complaint the complainant did not appear before the Court even for recording verification. As the result of which, the complaint came to be dismissed by the trial Court.

2. Learned Counsel for the Applicant states that on account of miscommunication between Advocate and Applicant, he could not remain present before the trial Court for recording verification. He further submits that interest of justice requires that he could be given liberty to pursue the complaint.

3. Learned Counsel for the Respondent vehemently opposed the application by stating that negligence of the Applicant can be seen from the conduct even not appearing for recording his verification.

4. It is settled position of law that instead of dismissing the *lis* on technicalities it is always in the interest of parties that the same is decided on merits. The Applicant has come out with the case of miscommunication with Advocate which is often seen in this profession. In such circumstances, the liberty needs to be given to the Applicant to substantiate his case on merit. Hence, the order:

O R D E R

- i) Application is allowed.
- ii) Impugned order dated 04.07.2019 passed in S.C.C. No. 161 of 2018 by learned JMFC, Shrigonda is hereby quashed.
- iii) Applicant to pay cost of Rs. 2,500/- (Rupees Two Thousand Five Hundred Only) to the Respondent herein.
- iv) Applicant / Orig. Complainant to appear before the trial Court on 28th July, 2023.
- v) The payment of cost to the Respondent herein is a pre-condition for entertaining the said complaint by the trial Court.

- vi) Trial Court to ascertain before proceeding further with the matter that there is tangible evidence placed before it about payment of the cost to the Respondent. If no such evidence is placed on record, this order shall stand vacated and the impugned order dated 04.07.2019 passed by learned JMFC in SCC No. 161/2018 shall stand revived.

(R.M. JOSHI, J.)

Malani