

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

42 CRIMINAL WRIT PETITION NO. 1209 OF 2022

VARSHA VISHAL AGRAWAL
VERSUS
PUNEET COTTON PVT. LTD. THROUGH ITS AUTHORIZED
SIGNATORY MR. SANJAY RAMESHWAR MANGAL

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Advocate for Petitioner : Mr. Vishal A. Bagdiya
Advocate for Respondent : Mr. Swapnil S. Patil
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CORAM : KISHORE C. SANT, J.
DATED : 02.03.2023

PER COURT :-

1. Heard.
2. Taken up for final disposal by consent of the parties.
3. The petitioner is aggrieved by the order dated 02.07.2022 passed by learned Sessions Judge, Aurangabad on Criminal Misc. Application No. 251/2021 dismissing the application. The application was filed for condonation of delay of 322 days that was caused in filing revision application challenging the order of issuance of process dated 04.01.2021 passed in S.C.C. No.2066/2020 by the learned J.M.F.C., Aurangabad.

4. The facts in short are that the respondent filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 in the court of Chief Judicial Magistrate, Aurangabad. Learned CJM was pleased to issue process by order dated 04.01.2021. It is the case of the petitioner that she had no knowledge of passing of the order as in the said complaint her address was shown to be that of Ichalkaranji, District Kolhapur and she was shown to be a partner of Mayur Industries of Ichalkaranji, District Kolhapur. She submits that since she is residing at Jaipur, Rajasthan, she could not get knowledge about the said order. She came to know only after the bailable warrant came to be issued and served upon her. Thereafter she collected necessary documents and filed criminal revision application and in that process, the delay is caused. In the application for condonation of delay, the only reason assigned is that she is resident of Jaipur and not of Ichalkaranji and therefore she could not get knowledge and in that process, delay has occurred.

5. Learned revisional court however considered that a perusal of the certified copy of the summons reveals that it was issued on 07.04.2021, though wrongly it is stated as 2020 in the order. The court disbelieved that the petitioner came to know about the order

only on 30.10.2021 and on that count, the application came to be dismissed. The petitioner before this Court has urged that since she is residing at Jaipur, she could not get knowledge. Except this, there is no other ground taken even in this petition. Learned Advocate for the petitioner argued that the petitioner should get an opportunity to argue the revision on merits by submitting that there is no sufficient averment as required under Section 141 of the Negotiable Instruments Act that there is no procedure followed as per Section 202 of the Cr.P.C.

6. Learned Advocate for the respondent vehemently opposes the petition. He points out that in fact the petitioner is very much residing at Ichalkaranji. Though it is stated that she is residing at Jaipur, the address is not correct. In the petition also she has not given address in detail except stating as "R/o.Jaipur, Rajasthan". He further pointed out that the affidavit which was filed by the petitioner before the Sessions Court was sworn in at Ichalkaranji. Even this petition is verified and sworn in before the notary at Ichalkaranji. He submits that the petitioner is approaching this Court with *mala fide*. He produced on record the certified copy which shows that the petitioner was served with the summons on 07.04.2020. He submits that the year 2020 is wrongly mentioned however, it should be 2021. Except

this typographical mistake, he submits that, it clearly shows that the petitioner though was served, did not deliberately attend the court. At the cost of repetition he submits that looking to the affidavits, they were verified at Ichalkaranji. It is clear that the petitioner has come with a false case only to protract the litigation and she is avoiding to appear before the Court. Learned counsel thus prays for dismissal.

7. It is well settled that the petitioner has to approach the court with clean hands and with true facts. When there is a statement on affidavit filed before both the courts, i.e. Sessions Court and this Court, that the petitioner is residing at Jaipur, still the affidavits are sworn in at Ichalkaranji. Normally this Court would not have looked into these small irregularities but in this case, the address of the respondent is shown as Ichalkaranji and still she maintains that she is residing at Jaipur. Whereas, the affidavits filed are sworn where her address is shown in the trial court. There cannot be dispute that she is residing at Ichalkaranji. This is also fortified by the fact that in the title clause she has not given detailed address of Jaipur. She has not even named any street, locality, area, building number etc. from Jaipur as her place of residence. This Court therefore finds that the petitioner has not filed the application with clean hands, neither the petitioner has approached this Court with clean hands. On this sole

ground, this Court finds that the petitioner deserves no relief. Hence, the petition stands dismissed and disposed off accordingly.

[KISHORE C. SANT, J.]

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