

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD
WRIT PETITION NO.1837 OF 2022**

TULJADAS S/O DURGADAS DESHPANDE
VERSUS
SUNIL S/O GANGADHARRAO SHAKAWAR

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Mr. G. L. Deshpande, Advocate for the Petitioner.
Mr. J. T. Ghorpade (Nawale), Advocate for Respondent.

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CORAM : S. G. CHAPALGAONKAR, J.

DATED : 12th SEPTEMBER, 2023.

PER COURT:-

1. The petitioner impugns the order dated 07.12.2022 passed by the learned Judicial Magistrate First Class at Aurangabad by which the delay of 89 days caused in filing the complaint under Section 138 of the Negotiable Instrument Act has been condoned subject to payment of cost of Rs.3000/-. Similarly, the petitioner challenges the order passed below Exhibit-14 in Miscellaneous Application No.2361/2018 by which the prayer is made seeking amendment in the name of the petitioner/accused.

2. The respondent herein has filed complaint under Section 138 of the Negotiable Instrument Act against the petitioner. Since there was delay of 89 days in filing the complaint, Criminal Miscellaneous Application No.2361/2018 was filed seeking condonation of delay of 89 days. It is contended in the said application that the delay is unintentional. Since the respondent was suffering from Pyrexia of unknown origin Chronic debility generalized weakness, he was advised to take rest. As

advised by the medical practitioner, he took rest till 04.12.2018. Thereafter, the complaint has been filed. The application is supported by the medical certificate issued by Dr. Giridhar Bondle. As such, it was prayed to condone the delay.

3. In support of the application, the respondent recorded his oral evidence. He has been cross-examined on behalf of the petitioner/accused. After hearing the parties, the learned Judicial Magistrate First Class, Aurangabad allowed the application recording the findings that the sufficient cause is made out by the respondent to condone the delay. So far as the application filed below Exhibit-14, the learned JMFC relying upon the judgment of the Supreme Court of India in the matter of ***S. R. Sukumar Vs. S. Sunaad Raghuram***¹ allowed the application for correction of name of the accused, since it is clerical mistake.

4. The learned Advocate appearing for the petitioner vehemently submits that the delay caused in filing the complaint is not properly explained. He would submit that the liberal interpretation of the term “Sufficient Cause” usually adopted while condoning the delay under Section 5 of the Limitation Act cannot be adopted in the proceedings under Section 138 of the Negotiable Instrument Act. He would submit that demand notice issued by the respondent/complainant to the petitioner/accused was duly replied by the petitioner on 14.08.2018, wherein it was specifically pointed out that the name of the petitioner is wrongly mentioned. In spite of such reply, the complaint is filed with incorrect name. He would further submit that in absence of sufficient cause, the complaint filed with huge delay of 89 days

1 2015 (9) SCC 609.

cannot be entertained. He would further submit that the medical certificate relied upon by the respondent in support of his ailments depicts simple fever, for which no hospitalization is required and for general weakness the rest of more than one week would not be necessary. As such, the reasons for the delay of 89 days are bereft of the sufficient cause. By inviting attention of this Court to the cross-examination of the respondent, he would submit that the false reasons are assigned in support of the delay condonation.

5. The learned Advocate appearing for the petitioner would further submit that the learned Judicial Magistrate First Class, Aurangabad has casually allowed the application for correction of the name vide order passed below Exhibit-14. There is no provision under the Negotiable Instrument Act by which the amendment in the complaint filed under Section 138 of the Negotiable Instrument Act can be permitted. Hence, the order is without jurisdiction.

6. The learned Advocate appearing for the respondent would support both the orders.

7. Having considered the submissions advanced, apparently there cannot be dispute on the legal preposition that the delay caused in filing the complaint under Section 138 of the Negotiable Instrument Act can be condoned subject to making out sufficient cause for delay. In the present case, there is delay of 89 days in filing the complaint. The respondent entered into the witness box and recorded his oral evidence, so also he relied upon the medical certificate in support of his contentions that he was

suffering from illness. The learned JMFC, Aurangabad after evaluation of the material on record, so also considering the objections on behalf of the accused concluded that delay of 89 days caused in filing the complaint is explained and sufficient cause is demonstrated for the purpose of delay condonation. Going by the evidence on record and reasons assigned in impugned order for condoning the delay of 89 days, it cannot be said that the Trial Court has arbitrarily exercised jurisdiction vested with him. The discretion available to the Court to condone the delay has been exercised based on oral evidence of the respondent supported by the medical certificate. Although, the respondent has been cross-examined, the petitioner failed to illicit the falsity in the averments. In that view of the matter, no case is made out to exercise the writ jurisdiction to interfere the impugned order condoning the delay of 89 days.

8. So far as the second challenge to the order below Exhibit-14 is concerned, it is not in dispute that there is no provision under the Negotiable Instrument Act that would enable the amendment in complaint. However, the Supreme Court of India in the matter of ***S. R. Sukumar Vs. S. Sunaad Raghuram*** (supra) has observed that notwithstanding the fact that there is no enabling provisions in the Code for entertaining the application for amendment, the Court may permit such amendment, if it does not relate to the infirmity which cannot be cured or not likely to cause prejudice to the accused. In the present case, it appears that there was mistake in the name of the accused. Such mistake was also caused while issuing demand notice and same was carried forwarded while filing the complaint. The name of the complainant has been referred as “Tejudas”

instead of “Tuljadas”. Apparently, this is inadvertent mistake. It is not in dispute that the cheque pertains to the Bank account of the Gurukrupa Glasses. However, it was alleged to be the blank cheque issued by way of security. All these contentions would be the matter of trial. However, it cannot be said that the learned JMFC has exceeded the jurisdiction while allowing the amendment, particularly as regards to the correction of the name of the accused. In that view of the matter, there is no merit in the writ petition and the same is dismissed accordingly.

(S. G. CHAPALGAONKAR)
JUDGE