

GRM

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL WRIT PETITION NO. 2686 OF 2022

Cliff Conwell LLP & Anr. ... Petitioners

V/s.

Platinum Blue Estates LLP & Anr. ... Respondents

Mr. Madhusudan Pareek, Adv. for the Petitioners.

Mr. Gaurav Parkar, Adv. for Respondent no. 1.

Mr. A. R. Patil, APP for the State/Respondent No. 2.

CORAM : R. G. AVACHAT, J.

DATED : JANUARY 3, 2023

P.C. :

1. Heard.
2. The challenge in this petition is to the order dated 24/03/2022 passed by the Additional Chief Metropolitan Magistrate, 58th Court, Bandra, Mumbai on application (Exhibit-30) in C.C. No. 1077/SS/2019.
3. By the impugned order, the petitioners herein have been directed to pay a sum of Rs. 60 lakhs jointly and severally to the respondent/complainant.
4. The learned Advocate for petitioners would submit that only on issuance of bailable warrants, they could mark their appearance before the Trial Court. A copy of complaint had not been served to them. On 24/03/2022 itself, the petitioners had moved an

application seeking adjournment. It was specifically mentioned in the application itself that, in the recent past of making such application, the petitioners had received a copy of complaint along with the documents relied on and therefore, it was difficult for them to file their response to the application (Exhibit-30). According to the learned Advocate for petitioners, still the Trial Court went ahead and without affording the petitioners an opportunity of hearing, passed the order impugned herein.

5. The learned Advocate for respondent/complainant would on the other hand submit that on 07/10/2021, an application under Section 143-A of the Amended Negotiable Instruments Act, 1881 for grant of interim compensation, was submitted. The learned Advocate for petitioners was present on the given date. The matter was thereafter adjourned to 23/12/2021 for reply. Thereafter again the matter was adjourned to 24/03/2022. As such, the petitioners had a time of not less than 3 months to give their response to the application. The learned Advocate, therefore, urged for rejection/dismissal of the petition.

6. Considered the submissions advanced. In the application seeking adjournment to file response to the application (Exhibit-30), it has specifically been averred that the petitioners have been served with a copy of complaint along with the documents in the recent past of moving of the said application. It, therefore, appears to this Court that the Trial Court should have given the petitioners at least a week's time to give their response to the application. But, the Trial Court went ahead and passed the

impugned order on the same day. The order suggests that the learned Advocate representing some of the petitioners herein, could not make any submission due to lack of instructions in that regard. As such, it appears to this Court that a reasonable opportunity of hearing has not been afforded to the petitioners herein. For this reason only, the petition deserves to be allowed with following order :-

ORDER

- a. Criminal Writ Petition No. 2686/2022 is allowed.
- b. The order impugned herein is set aside subject to cost of Rs. 20,000/- to be paid by the petitioners to the other side.
- c. The Trial Court is requested to decide the application (Exhibit-30) on its own merits within a period of couple of weeks from the date of receipt of a copy of this order, but not before the petitioners would file their response to the application.
- d. It is informed that the next date before the Trial Court is 24/01/2023. It is, therefore, directed to decide the aforesaid application within two weeks thereafter.
- e. Criminal Writ Petition No. 2686/2022 stands disposed of accordingly.

(R. G. AVACHAT, J.)