

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

CRIMINAL APPLICATION NO.1321 OF 2023

Shree Siddhivinayak Developers & Anr. Applicants

versus

M/s. Kimaya Wellness Ltd. & Anr. Respondents

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- Mr. Samir Vaidya a/w Kevin Gala a/w Kaivalya Raul a/w Prathamesh Sarang i/b. Mallika Ingale, Advocate for Applicants.
- Mr. Aseem Naphade a/w Ms. Kausar Banatwala a/w Ms. Neuty Thakkar a/w Ms. Paluck Bengali a/w Ms. Saisha Pisal i/b. Tushar Goradia, Advocate for Respondent No.1.
- Mr. Arfan Sait, APP for the State/Respondent.

CORAM : SARANG V. KOTWAL, J.
DATE : 08th NOVEMBER, 2023

P.C. :

1. Heard Mr. Samir Vaidya, learned counsel for the Applicants, Mr. Aseem Naphade, learned counsel for Respondent No.1 and Mr. Arfan Sait, learned APP for the State.

2. The Applicants were the original accused Nos.1 and 2 in Summary Criminal Case No.7104441/SS/2011 before the

Metropolitan Magistrate, 20th Court, Mazgaon, Mumbai. The Applicants were convicted for the offence punishable u/s 138 of the Negotiable Instruments Act. They were sentenced to pay fine amount of Rs.10 lakhs and in default the Applicant No.2 was to suffer simple imprisonment for three months. The fine amount was directed to be paid to the complainant towards compensation. The complainant is the Respondent No.1 in this application.

3. The Applicants preferred Criminal Appeal No.309 of 2023 before the Additional Sessions Judge, Greater Mumbai. The learned Judge vide order dated 12/05/2023 passed in Miscellaneous Application in Criminal Appeal No.309 of 2023 suspended the sentence imposed on the Applicants till disposal of the Appeal on the condition of depositing minimum 20% of the fine amount in the Trial Court within a period of 60 days from 12/05/2023.

4. The Applicants preferred an application in the said

Appeal for extension of time to deposit 20% amount. The said Application in Criminal Appeal No.309 of 2023 was allowed and time to deposit 20% of the amount of compensation was extended till 10/08/2023. The said amount was not deposited and therefore the complainant/Respondent No.1 herein preferred application for vacating the order of suspension of sentence. That application was allowed by the impugned order dated 29/08/2023 and the order of suspension of sentence dated 12/05/2023 passed in Miscellaneous Application in Criminal Appeal No.309 of 2023 was vacated. That order is under challenge in the present application. The other prayer is for deleting the condition of depositing 20% of compensation amount .

5. I have heard both the learned counsel for the respective parties extensively.
6. After the arguments, the Applicant No.2 has filed an undertaking in the present application in which he has

undertaken to deposit 20% of the amount of the compensation which came to Rs.2 lakhs within three months from 08/11/2023. It is further mentioned that the amount of Rs.50,000/- would be deposited on or before 30/11/2023 and the balance amount of Rs.1,50,000/- would be deposited within three months from 08/11/2023. Significantly it was also mentioned in paragraph No.3 that, in default of depositing the said amount of Rs.2 lakhs within three months, the suspension of sentence be vacated. This undertaking takes care of the grievance of the Respondent No.1 as the Applicant has undertaken to deposit 20% of the amount of compensation within a period of three months. The affidavit and the averments made by the Applicant in that behalf are acceptable to the Respondent No.1 as is stated by the learned counsel for the Respondent No.1 on instructions. The affidavit also mentions that in default of deposit of such amount, the suspension of sentence is to stand vacated. This consequence of not complying with the terms mentioned in the affidavit are also mentioned in the affidavit itself. The affidavit is accepted and taken on record.

7. In this view of the matter, following order is passed :

ORDER

- (i) The sentence imposed on the Applicants shall stand suspended for a period of three months from today and if the amount undertaken to be deposited is not deposited, by the Applicants, the order of suspension of sentence will stand vacated by the end of three months from today.
- (ii) If the amount as undertaken to be deposited, is in fact deposited by the Applicants, the order of suspension of sentence shall continue till the decision of the Criminal Appeal No.309 of 2023 before the Additional Sessions Judge, Mumbai.
- (iii) The said amount as mentioned in the affidavit is permitted to be deposited before the Appellate Court.
- (iv) The Respondent No.1 is at liberty to prefer an application u/s 148(3) of the Negotiable

Instruments Act for withdrawal of the said amount in consonance with the requirement and condition of section 148(3) of the Negotiable Instruments Act.

- (v) It is made clear that the Criminal Appeal can be heard independently and there is no stay to the hearing of the Criminal Appeal by the Additional Sessions Judge.
- (vi) With these directions, the application is disposed of.

(SARANG V. KOTWAL, J.)