

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR

CRIMINAL APPEAL NO. 303 OF 2023

APPELLANT: Baheti Automobiles, a registered
Partnership firm, through its Partner,
Kamalkishor Fulchand Baheti,
Aged-75 years, Occu: Business, R/o Shivaji
Park, Akola, Tq. & Dist. Akola
(Original Complainant)

...V E R S U S...

RESPONDENT Nilesh Nilkanthrao Deshmukh,
Aged about Adult, Occu: Business,
Proprietor "Shivani Automobiles and
Shivani Auto Deal" R/o Opposite Nutan
Hindi High School Shivaji Park, Akola,
Tq. & Dist. Akola. (Original Accused)

Shri Vipul Bhise, counsel holding for Mr Shantanu Khedkar for
appellant.

None for the respondent.

CORAM : URMILA JOSHI-PHALKE, J.

DATE OF RESERVE: 12/06/2023

DATE OF DECISION: 20/06/2023

ORAL JUDGMENT :

1. Heard learned counsel for the appellant. None

appears for the respondent.

2. Present appeal is preferred by the appellant against the order of dismissal of the complaint for default. The complainant filed the complaint under Section 138 of the Negotiable Instruments Act, 1881. The fact is not in dispute that the complaint filed by the present appellant against the respondent has not been decided on merits but has been dismissed for want of prosecution.

3. Learned counsel for the appellant submits that though there are certain lapses on the part of the appellant in prosecuting the matter, the opportunity needs to be given to the appellant to conduct his complaint on merit. The order passed by the Judicial Magistrate First Class, Akola shows that complainant did not take effective steps for leading evidence. He filed his affidavit vide Exhibit-38. The part of the cross-examination is also conducted by the accused, but the complainant remained absent on various dates. No application was filed on record and the trial Court has invoked the powers under Section 256 of the Code of Criminal Procedure 1973 and has dismissed the complaint for want of prosecution.

4. After having considered the submission made by the

learned counsel for the appellant, it appears to me that an opportunity needs to be given to the complainant to prosecute his complaint on merits. From the record, it is apparent that the appellant/complainant was not diligent in prosecuting his complaint before the learned trial Court and remained absent on various dates. Considering the same, the adequate costs is to be imposed on the appellant.

5. It is submitted by the learned counsel for the appellant that, due to some unavoidable circumstances, he could not remained present for the cross-examination, if the complaint is restored, no loss or prejudice will be caused to the respondent. However, if the opportunity is not granted to the appellant, he would suffer a great loss and prejudice.

6. Considering the ground raised by the appellant, one more opportunity is required to be given to the complainant to prosecute his complaint on merits. In the result, I pass following order:

- a) Order dated 12/06/2017 passed by the Judicial Magistrate First Class, Akola in Summary

Criminal Case No. 820/2008 is quashed and set aside.

- b) Summary Criminal Case No. 820/2008 stands restored to his original file, subject to the costs of Rs.3000/-.
- c) Learned Judicial Magistrate First Class, Akola shall decide the complaint on its merits and in accordance with law by giving due opportunity to the complainant as well as the accused as expeditiously as possible.
- d) The parties to appear before the learned trial Court on 03/07/2023.

Criminal Application stands **allowed** in the aforesaid terms.

JUDGE

RKN

Signed By:RAJESH K
NANDURKAR

Signing Date:22.06.2023 19:39