

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

**CRIMINAL APPLICATION NO.576 OF 2023 IN
CRIMINAL APPEAL (ST.) NO.4175 OF 2023**
(M/s. Devdarshan Tiles Pvt. Ltd. Vs. M/s. Sofi Taj Tiles)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. Bobby Thomas, Advocate for the applicant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 10, 2023.

Heard.

2. Present application is filed for leave to file appeal.

3. Being aggrieved with the judgment passed by the Judicial Magistrate First Class, Nagpur in S.C.C. No.21699/2017 in which the respondent is acquitted from the offence punishable under Section 138 of the Negotiable Instrument Act, 1881, the appellant has filed the appeal.

4. As per the contention of the appellant that learned trial Court had not considered that there was legal and enforceable debt against which the cheque was issued.

5. The trial Court has accepted the defence which was raised first time under Section 313 of the Code of Criminal Procedure and the witness is not cross-examined on the said defence.

6. It is further contended that the learned trial Court has further not considered the documentary

evidence which is produced on record and erroneously held that the respondent has rebutted the presumption. Thus, the appellant has every chance of success in the present appeal, and therefore, leave be granted.

7. On issuing the notice, respondent failed to appear before the Court.

8. Heard learned Counsel for the appellant. Perused the impugned judgment and the grounds of the appeal. The appellant has made out the case to show that he has some arguable points in the present appeal. The ground raised is that the respondent has not taken any specific defence during the cross-examination of the witnesses, however, he has taken the defence under Section 313 of the Code of Criminal Procedure and which is accepted by the learned Trial Court.

9. Learned trial Court erroneously held that the respondent has rebutted the presumption. After hearing the learned Counsel for the appellant it reveals that he has some arguable points in the present appeal. In view of that leave is granted.

CRIMINAL APPEAL (ST.) NO.4175 OF 2023

Heard.

2. Call for Record and Proceedings.

3. Place the matter before the Court after preparation of the paper book.