



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 01 OF 2024

Vinit Enterprises,
Prop. Vinit Vinod Dhamande
Age : 30 years, Occ: Business,
R/o. ARMO Quarter, Near Cantonment
Hospital, Aurangabad - 431 002.

... Applicant
(Orig. complainant)

Versus

1. Bhagwanrao Bhikan Dhage,
Proprietor of Vaishnavi Collection,
Age: 45 years, Occ.: Business,
2. Sangita Bhikan Dhage,
Age: 40 years, Occ.: Business,

Both R/o. Samarth Nagar,
Near Varad Ganesh Mandir,
Aurangabad - 431 001.
Mob. 9421691689

... Respondents

...
Mr. Vikrant S. Palsikar, Advocate for Applicant
Mr. Vijay S. Wakale, Advocate for Respondent Nos.1 and 2
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 1st APRIL, 2024

PRONOUNCED ON : 8th APRIL, 2024

ORDER :

1. Dissatisfied by the judgment and order of acquittal passed by learned Judicial Magistrate First Class, Court No.21, Aurangabad in S.C.C. No. 5644 of 2022 dated 11.10.2023, acquitting respondents from offence punishable under section 138

of Negotiable Instruments Act, original complainant is hereby seeking leave to question the judgment and order of the same.

2. Narrating the gist of the complaint, learned counsel for applicant submitted that, both complainant and accused are in the business of sale of garments. Complainant is wholesaler, whereas accused is retailer. Accused purchased garments worth Rs.1,07,000/- and some odd amount. In the beginning, accused repaid some amount, but thereafter became irregular. An amount of Rs.39,282/- was due and towards its he issued a cheque worth of Rs.37,000/-. However, on its presentation, it was returned dishonoured and therefore legal steps were taken and finally complaint was lodged. It is further submitted that, all essential ingredients for attracting section 138 of N.I. Act were available, but learned trial court acquitted the accused on the sole ground that notice is issued on incorrect address, hence, it is not a good service. It is pointed out that, in fact two addresses were supplied, but still complaint is dismissed for above reason. There is a good case on merits in appeal and hence he seeks leave.

3. Justifying the order, learned counsel for respondent accused would submit that, proceedings under section 138 of N.I. Act mandate strict compliance of technicalities. Here, accused has

not received notice. Therefore, learned trial court rightly acquitted the accused. He invited attention of the court to paragraph nos. 20, 21 and 22 of the judgment and prayed to refuse leave.

4. Heard both sides. Both parties came to be in the business of garments. There is no dispute about business relations and even issuance of cheque by accused. His defence is that, there is no legal notice served upon him. It seems that, complainant has issued demand notice dated 04.05.2022 at Exh.39. Even postal track record (Exh.40) has been placed on record. Apparently it seems that notice carries two addresses, one address of Karmad and second one of Samarthnagar, Aurangabad. Postal receipt shows that notice being served at Samarthnagar address. Accused has denied address of Samarthnagar belonging to him. Complainant seems to have admitted in cross that he does not know the address of the accused and that he had never visited the house of accused, rather admitted that they meet at Karmad. Resultantly, legal notice is not served on Karmad address. Therefore, apparently there is no good service. Consequently, when law mandates issuance of a legal notice and its effective service, the said requirement not being met, no fault can be found in the impugned order.

No good ground made out to grant leave and in the light of above discussions and short falls, no purpose would be served by granting leave. Hence, the following order:-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)