



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.17 OF 2022

Somnath S/o. Ganpatappa Gulve,
Age : 52 years, Occu. : Agriculture,
R/o. : Village Pachegaon, Tq. Georai,
Dist. Beed.

.... Applicant

Versus

Masu S/o. Mahadeo Bansode,
Age : 41 years, Occu. : Driver,
R/o. : Village Panchegaon, Tq. Georai,
Dist. Beed.

.... Respondent

...
Mr. Navin S. Shah h/f. Mr. S. V. Natu, Advocate for Applicant.
Mr. Vilas P. Sawant, Advocate for Respondent
(Appointed through Legal Aid)
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 10th JANUARY, 2024

PRONOUNCED ON : 19th JANUARY, 2024

ORDER :

1. This leave application is at the instance of original complainant, who had initiated proceedings under section 138 of the Negotiable Instruments Act, 1881, seeking permission to file appeal against order of dismissal in default passed by learned Judicial Magistrate First Class, Georai dated 13.01.2022, resulting into acquittal of respondent accused.

2. Learned counsel for applicant pointed out that,

proceedings under section 138 of N.I. Act were instituted against accused respondent and in that matter process was also issued. Complainant led his evidence and his matter was posted for cross on 11.05.2018. But, accused remained absent and matter stood adjourned on various times, and thereafter, on account of Covid pandemic, matter could not proceed. However, learned trial Judge dismissed the complaint for want of prosecution. Application for restoration was filed, but the same was also rejected. He submitted that, there is no deliberate attempt not to carry prosecute the matter. According to him, respondent accused went scot-free in spite of committing offence under section 138 of N.I. Act. Learned counsel submitted that, previously also this court had set aside the order of dismissal in the interest of natural justice and had directed restoration of the matter and proceeding to be continued. He placed decisions in the following cases of this court on record :-

1] Terna Shetkari Sahakari Sakhar Karkhana Ltd v. Anant & Anr., 2011 (2) Bom.C.R.(Cri.) 620

2] Murlidhar S/o. Harkisandas Manwani v. Shri Sharangdhar S/o. Ramlal Lohar, 2011 (3) MWN (Cr.) (DCC) 196 (Bom.)

3. In answer to above, learned counsel for respondent would submit that, there was delay on the part of complainant in conducting the matter. Deliberately the matter was prolonged. He

submitted that, roznama is clear to that extent. That, on numerous dates complainant remained absent and matter is kept pending for almost 5 years. That, even Covid pandemic period is exempted for consideration, still there is failure to prosecute the case. That, no attempt was made on the very day and matter was dismissed for default to get it restored and hence, he prays that, leave be refused.

4. Perused the papers, order and copies of roznama. After hearing both sides and on going through the papers, it transpires that, present applicant had instituted proceedings bearing S.C.C. No.175 of 2010 under section 138 of N.I. Act on 26.02.2010 alleging commission of offence of dishonor of cheque.

5. Record shows that, order of issuance process was passed on 08.06.2010 by learned Judicial Magistrate First Class, Georai and even plea of accused was recorded on 06.02.2017, but complainant and his advocate both are absent. It is noted in the order that, matter is pending for cross-examination of complainant since 02.05.2017 and no applications are placed by complainant seeking any adjournment, and therefore, matter was fixed for further orders on 02.01.2020. Learned trial Judge seems to have opined that, matter is old and is unreasonably dragged and therefore, complaint was dismissed for want of prosecution by

order dated 13.01.2022.

6. It seems that complainant moved an application for restoration by setting aside the dismissal in default order same day. Learned trial Judge seems to have passed order that for want of provisions and powers, prayers so raised cannot be granted.

7. Perused the orders passed by this court referred above. In view of above discussion, there is point for consideration in appeal and hence, leave deserves to be granted. Hence, I proceed to pass following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) Appeal stands **admitted**.
- (v) Call record and proceedings.

(ABHAY S. WAGHWASE, J.)