



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 48 OF 2019

Lokmat Media Pvt. Ltd.	]	
(Which is formerly known as Lokmat News Papers Pvt. Ltd.]	]	
& Prithvi Prakashan Pvt. Ltd.)	]	
A company registered under the Companies Act,	]	
having its registered office at 126, Mittal Towers,	]	
B-Wing, 12 th Floor, Nariman Point, Mumbai	]	
and having its Administrative Office at	]	
Lokmat Bhavan, Jalna Road, Aurangabad	]	
Through its Authorized Signatory,	]	
Sanjay Lalchand Saindane,	]	
Age : 45 years,	]	
Occu. : Service as General Manager (Circulation)	]	
R/o. : Aurangabad.	]	... Applicant.

Versus

- | | | | |
|----|--|---|------------------|
| 1. | M/s. Manoj Agency, |] | |
| | Azad Chowk, Mandir Galli, |] | |
| | Near Brijwasi House, Near Shivling Math, |] | |
| | Latur. |] | |
| 2. | M/s. Manoj Govindlal Sharma, |] | |
| | Age : Major, Occu. : Business, |] | |
| | Prop. Of Manoj Newspapeer Agency, |] | |
| | Azad Chowk, Mandir Galli, |] | |
| | Near Brijwasi House, Near Shivling Math, |] | |
| | Latur. |] | |
| 3. | M/s. Kantilal and Brothers, |] | |
| | Azad Chowk, Mandir Galli, |] | |
| | Near Brijwasi House, Near Shivling Math, |] | |
| | Latur. |] | |
| 4. | Kantilal Govindlal Sharma, |] | |
| | Age : Major, Occu. : Business, |] | |
| | Prop. M/s. Kantilal And Brothers, |] | |
| | Azad Chowk, Mandir Galli, |] | |
| | near Brijwasi House, Near Shivling Math, |] | |
| | Latur. |] | ... Respondents. |

...
Mr. Satyajit S. Bora, Advocate for Appellant.
Mr. S. V. Natu, Advocate for Respondent No.2
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th JANUARY, 2024

PRONOUNCED ON : 01st FEBRUARY, 2024

ORDER :

1. This application for leave to file appeal is on account of order passed by learned Chief Judicial Magistrate, Aurangabad dated 01.08.2012 in S.C.C. No. 3819 of 2009 dismissing the complaint filed by applicant under section 138 of Negotiable Instruments Act, 1881 for want of prosecution.

2. It is submitted that, complainant had instituted above proceedings against present respondents with whom there were business transactions. Respondents were awarded agency for distribution of newspaper. Respondents used to take newspapers from complainant on credit. As there were dues, the same were demanded and towards legal debt cheque was issued. Cheque got dishonoured and respondents were therefore put to notice to pay cheque amount, but he failed to repay within stipulated time and therefore, proceedings were initiated under section 138 NI Act.

3. It is next submitted that, in the trial court, transaction on credit, issuance of cheque, its dishonour, failure to repay within

stipulated period, all such aspects are not refuted and are rather cogently established. He pointed out that, even learned trial court got convinced about the necessary ingredients to be available and thereafter process were issued on available address. The said notice was returned as accused was not found. However, in spite of all compliance, learned trial court by its order dated 01.08.2012 acquitted the accused, holding non prosecution.

4. It is submitted that, order of learned trial court is patently illegal. Learned trial court ought not to have dismissed the complaint by exercising powers under section 256 of Cr.P.C. as in fact there was no effective service on accused. Resultantly, the impugned order being illegal, applicant intends to prefer appeal and hence the leave application.

5. Learned counsel for respondents would submit that, in spite of lodging proceedings under section 138 of N.I. Act, complainant failed to prosecute. No effective timely steps were taken by accused. There is delay of over 5 years in conducting the matter and therefore, it is his submission that, learned trial court has rightly dismissed the complaint and acquitted the accused.

6. After considering the submissions of both sides,

respondents have not questioned the transaction, liability which are the essence of proceedings under N.I. Act. It transpires that after institution of complaint, process was also issued on 02.03.2010. However, complaint is dismissed for default on 01.08.2012 by passing following order :-

“Complainant is absent when called out. Complainant is absent since long. Hence, proceeding are dropped and the accused is acquitted for the offence punishable under section 138 of N.I. Act vide section 256 of Cr.P.C.”

7. Record shows that, proceedings under section 138 of N.I. Act were filed on 24.07.2009. Process seems to have been issued on 02.03.2010. Verification of complaint is also done on 02.03.2010 itself. However, impugned order is passed, thereby acquitting respondents accused under section 138 of N.I. Act in view of provisions under section 256 Cr.P.C.

8. *Prima facie*, it is stated on affirmation that, summons were issued against the accused on the address provided in the complaint and attempts to serve failed as accused was not found on the address. Taking such stage into consideration and in view of the citations of this very court relied and referred here, legality of the impugned order is required to be dealt in full-fledged appeal.

Consequently, leave as prayed 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.)