



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 33 OF 2023

Raju Marotrao Tandale,
Age : 40 years, Occu : Business,
R/o. Sant Nagar, Aundha Road,
Hingoli.

... Applicant

(orig. Complainant)

Versus

Jitendra S/o. Shivkumar Dube,
Age : 45 years, Occu. : Business,
(Prop. Vaibhav Shoes Center),
R/o. Nava Mondha, Hingoli,
Dist. Hingoli.
Office – Sai Veg Restaurant,
Akola Road, Opp. Sanskar Talkies,
Hingoli

... Respondent

(Orig. Accused)

...
Mr. R. N. Chavan h/f. Mr. Vishal Bagdiya, Advocate for Applicant
Mr. Swapnil S. Rathi, Advocate for Respondent
...

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 05 FEBRUARY 2024

PRONOUNCED ON : 08 FEBRUARY 2024

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act, 1881 against present respondent, is aggrieved by the dismissal of complaint and acquittal of accused by learned Judicial Magistrate First Class, Hingoli in SC.C. No.195 of 2017 and is thereby intending to prefer appeal and hence the instant leave application.

2. Learned counsel for applicant pointed out that, complaint bearing S.C.C. No. 195 of 2017 was instituted for commission of offence under section 138 of N.I. Act. All necessary formalities were completed. On getting convinced, learned trial Judge has also issued process. However, it is pointed out that, complaint is dismissed in default i.e. for want of prosecution. Learned counsel submits that, complainant is deprived of justice. There was no reason for dismissal in default. Reasons for non prosecution were due to Covid pandemic and as such failure to prosecute was justice. The same has not been considered by learned trial Judge. Moreover, according to him, learned trial Judge also failed to consider the continuous absence of accused in causing appearance. Therefore, in the interest of justice, he prays to set aside the impugned order.

3. In answer to above, learned counsel for respondent pointed out that complaint was lodged in the year 2017. According to him, no doubt, process was issued and accused had also responded to the court proceedings, but complainant himself failed not once, but on several occasions to continue prosecution. Finding complainant absent for sufficiently long, it is submitted that, learned trial Judge has ultimately dismissed the complaint for want of prosecution and it is so permissible also under the law.

Resultantly, he prays to refuse leave as according to him no case to that extent is made out.

4. Heard both sides. Perused the papers. On going through the same, it seems that, present applicant had instituted proceedings bearing S.C.C No. 195 of 2017 on 07.04.2017. Record shows that, learned trial Judge after initial verification has issued process. However, copy of roznama shows that process is issued on 03.10.2017 itself. Since then, matter periodically appeared on board. Both learned counsel invited attention of this court to the roznama dated 27.01.2023 and 13.02.2023. Learned counsel for applicant submits that, on last date, complainant was present, but accused had sought exemption, however, still complaint itself is dismissed. On the other hand learned counsel for respondent invited attention of this court to the roznama dated 27.01.2023, which shows that, matter was for evidence of complainant and therefore on said date there specific is noting in roznama that, if, complainant fails to adduce evidence, matter would be kept for orders of dismissal. Thereafter, almost after three weeks matter seems to be appearing on the board dated 13.02.2023. Said roznama shows that, complainant is shown to be absent consistently and therefore impugned order is passed.

5. It is mandate of law that, more particularly, proceedings under section 138 of N.I. Act should be conducted and concluded as early as possible. Here, roznama shows that, matter is being dragged from the year 2019. Complainant has failed to prosecute in spite of sufficient chances being given and matter being adjourned by the court for evidence of complaint, but he has failed to adduce evidence. Therefore, taking such material into account, no fault can be found in the order of dismissal. No case being made out, I proceed to pass the following order :-

ORDER

The application stands rejected.

(ABHAY S. WAGHWASE, J.)