



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

**APPLN. FOR LEAVE TO APPEAL BY PVT. PARTY NO. 57 OF 2023**

Narayansingh S/o. Hirasingh Tabelewale  
Age : 60 years, Occu. : Business,  
R/o. Nandigram Society, Tq. & Dist. Nanded.

... Applicant  
(Orig. Complainant)

*Versus*

Sharad S/o. Sadashiv Bhawar,  
Age : Major, Occu. : Agriculturist/Business,  
R/o. Village Kakandi, Tq. & Dist. Nanded.

... Respondent  
(Orig. Accused)

...  
Advocate for Appellant : Mr. Shubham Shinde h/f. Mr. Ravindra Gore  
...

**CORAM : ABHAY S. WAGHWASE, J.**

**DATED : 21<sup>st</sup> MARCH, 2024**

**PER COURT :**

1. Original complainant is hereby seeking leave to questions the judgment and order of dismissal dated 10.02.2023 passed by learned Judicial Magistrate First Class, Court No.2, Nanded in S.C.C. No. 589 of 2022.

2. It is submitted that, complainant had instituted proceedings bearing S.C.C. No.589 of 2022 seeking action under section 138 of Negotiable Instruments Act, against present respondent, who was in fact old friend and was in need of money

because of financial problems. That time, accused had agreed to execute agreement of sale of land towards consideration of Rs.12,00,000/-. Subsequently, accused issued cheque, but it was dishonoured. After all legal formalities of notice, complaint was filed on 23.03.2022. On some dates complainant was absent and on some dates court was on leave. In between there was miscommunication between complainant and his advocate and as such matter went unattended. Consequently, learned Magistrate by order dated 10.02.2023 dismissed the matter for want of prosecution.

3. It is further submitted that, complainant had a good case. Mere absence for few dates was misconstrued as non diligence. That, even on some dates court was on leave. Directly drastic action of dismissal has been taken rendering injustice to the complainant in a case where there is dishonoured of cheque of huge amount. Learned counsel undertakes to prosecute the matter with due diligence in future. Hence, he seeks leave.

4. Record shows that in spite of issuance of notice to respondent, he has refused to accept the notice, and therefore, in view of the report, service was held to be good in the eyes of law by order dated 15.02.2024. Therefore, sole respondent was served.

Thereafter, matter came up on board on 07.03.2024. As none appeared in both sessions for respondent, as a last chance, matter was adjourned and kept on 21.03.2024 i.e. today. Today also, none was present for respondent in the morning session and finally on insistence of learned counsel for applicant, matter was heard and kept for orders.

5.           Apparently, leave is sought to question the order of dismissal in default dated 10.02.2023. Perused the copies of roznama, which shows that, S.C.C. No. 589 has been instituted on 23.03.2022. It seems that, matter appeared on the board of trial court on 11.08.2022 and 28.09.2022, the applicant was absent and matter was adjourned to 05.11.2022. On 05.11.2022 court was on leave. Thereafter, matter also appeared on board on 30.11.2022 and 20.1.2023, but none appeared for complainant to adduce affidavit of evidence and on such dates, matter was posted for orders and finally on 10.02.2023, learned trial court has passed order for dismissal in default and said order seems to be questioned.

6.           Learned counsel for applicant undertakes to prosecute proceedings with diligence henceforth. Considering the above discussion, in the interest of justice and fair opportunity, leave is

deserves to be granted. Hence, 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.)**