



IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.17 OF 2024

Madhusudhan Vishwanath Amrutsagar,  
Age : 47 years, Occu. : Service,  
R/o. Forest Colony, Nagao Bari, Dhule  
Dist. Dhule

... Applicant  
(Orig. Complainant)

Versus

Pratima Balasaheb Pawar,  
Age : 42 years, Occu. : Service,  
Through : Suresh Pandit Agale,

Residing at Sai Vihar-1, in front of Naik  
Hospital, Kothe Galli, Dwarka Circle Nashik  
R/o. M.V.P. Samaj College of Social Work,  
IMRT, Nashik, Shivaji Nagar, MVP Campus,  
Nashik, District Nashik.

... Respondent  
(Orig. Accused)

...  
Mr. Lalitkumar S. Mahajan, Advocate for Applicant.  
Mr. M. R. Wagh, Advocate for Respondent.  
...

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

**DATED : 15<sup>th</sup> MARCH, 2024**

**ORDER :**

1. Vide instant application, original complainant is seeking leave to file appeal against order dated 24.03.2023 passed below Exh.1 by learned Judicial Magistrate First Class, Court No.3, Dhule in Summary Criminal Case No.1086 of 2019.

2. Learned counsel for applicant submitted that, accused as well as her husband being acquainted and they being in dire

need of Rs.2,70,000/-, applicant handed over said amount to the accused. While accepting the same, respondent accused and her husband assured its return within six months. However, after more than 8 months, respondent accused returned only Rs.40,000/- and 4 to 5 months thereafter, after repeated demand of the applicant, a cheque towards repayment of balance amount was issued by accused, but it was returned dishonored and after legal notice, when amount was not paid, proceedings under section 138 of Negotiable Instruments Act, 1881 (N.I. Act) were instituted on 28.05.2019. However, merely for want of taking steps, learned trial court has dismissed the complaint.

3. Learned counsel further pointed out that, roznama shows that, complainant was pursuing his complaint through his Advocate and also filed application for bailable warrant. However, as nothing fruitful came up, complaint, through his Advocate, requested for issuance of non bailable warrant on 08.11.2022 and the same was issued on 24.01.2023. However, since no report was traceable, learned trial court adjourned the matter on 24.03.2023 and hence the Advocate for the applicant did not take any steps on the said date, on which the complaint was dismissed. He submits that, through there is a good case on merits, due to dismissal in default, complainant applicant has suffered injustice and so he seeks relief as prayed.

4. Other side has strongly objected pointing out that there is failure to prosecute and therefore trial court has rightly dismissed the complaint.

5. Heard both sides. Perused roznama. It seems that, proceedings under section 138 of N.I. Act bearing S.C.C. No. 1086 of 2019 were instituted. It seems that, learned trial court also issued process on 21.06.2019. Thereafter, on various dates Advocate of the applicant seems to have attended the case, however, only for want of taking steps the complaint seems to have been dismissed in default.

6. Considering the above and also the reasons mentioned in paragraph nos.8 and 9 and in view of a fair opportunity to contest the proceedings, leave deserves to be granted. Hence, I proceed to pass the following order :-

**ORDER**

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) List the appeal for further consideration on 12.04.2024.

**(ABHAY S. WAGHWASE, J.)**