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IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

CRIMINAL APPEAL NO.889 OF 2024

Prabhakar Madhav Badgujar

APPELLANT

VERSUS

Deoman Dhavalu Malche (Bhil) and Another

RESPONDENTS

.....
Mr. Umesh Mitkari h/f Mr. M. S. Kulkarni, Advocate for appellant
.....

[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 1st OCTOBER, 2024

ORDER :

1. Complaint filed by the appellant under section 138 of the Negotiable Instruments Act is dismissed by learned Judicial Magistrate, First Class (Court No. 7) Dhule, on 30th November, 2023, for want of want of effective steps and the respondents - accused are acquitted.
2. Though served, none appears for the respondents.
3. Leave is granted in the present matter on 25th September, 2024. Record indicates that complaint under the Negotiable Instruments Act, is filed on 4th September, 2018 and respondents - accused appeared on 14th March, 2019. Plea of the accused was recorded on 12th December, 2022. Thereafter, it appears that the accused did not appear. Appellant, therefore, filed application for

securing presence of the accused, on 21st August, 2023. On 30th November, 2023, when the matter was called out, neither anyone appeared on behalf of the appellant – complainant nor any application was filed. The Trial Court observed that no effective steps are taken by the complainant for securing presence of the accused. The case is more than 5 years old. Hence, the Trial Court dismissed the complaint for want of effective steps and acquitted the accused.

4. It is a matter of record that the accused had caused their appearance before the Trial Court. The appellant is prosecuting the complaint since 2018. Cheque amount is Rs.6,61,450/-. The appellant needs to be given fair opportunity to prove his case on merits. The impugned order is, therefore, liable to be quashed and set aside.

5. In the result, the appeal is allowed. Impugned order dated 30th November, 2023, passed by learned Judicial Magistrate, First Class, (Court No.7) Dhule in STCC No. 2268 of 2018 is quashed and set aside, on the condition that appellant shall pay costs of Rs.5,000/- to the accused in the Trial Court.

**[NITIN B. SURYAWANSHI]
JUDGE**