



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 07 OF 2024

Lokvikas Nagari Sahakari Bank Ltd. Aurangabad
Head Office: Plot No.10, Near Seven Hills
Highway Bridge, Jalna Road, Aurangabad
Branch Office: Kannad, Tq. Kannad,
Dist. Aurangabad

Through,

Balu Vinayak Avhale

Age : 48 years, Occu.: Job (Clerk),

Lokvikas Nagari Sahakari Bank Ltd. Aurangabad,

Branch-Kannad, Tq. Kannad, Dist. Aurangabad

... Applicant

Versus

Pooja Provisions & General Stores

Proprietor,

Raju Bansi Rathod

Age : 44 years, Occu : Business/Agriculture,

R/O. Wadner, Tq. Kannad, Dist. Aurangabad

... Respondent

...

Mr. Shubham K. Shinde h/f. Mr. R. V. Gore, Advocate for Appellant.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 29th FEBRUARY, 2024

PRONOUNCED ON : 05th MARCH, 2024

ORDER :

1. Vide instant application, original complainant is seeking leave to file appeal against order dated 18.07.2023 passed below Exh.1 by learned Judicial Magistrate First Class, (Court No.3), Kannad, Dist. Aurangabad in S.C.C. No. 829 of 2019.

2. Learned counsel for applicant submitted that, there

was loan transaction for a fixed period to the tune of Rs.5,00,000/-. Cheque towards repayment was issued by accused, however 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 28.08.2019. However, merely on account of remaining absent for two consecutive dates, learned trial court has dismissed the complaint for want of prosecution. He pointed out that, roznama shows that, Presiding Officer was also on leave. There is a good case on merits. However, due to dismissal for want of prosecution, complainant applicant has suffered injustice and so he seeks relief as prayed.

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

4. Heard both sides. Perused roznama. It seems that, proceedings under section 138 of N.I. Act bearing S.C.C. No. 829 of 2019 were instituted. It seems that, learned trial court also issued process on 20.11.2019. Thereafter, matter seems to be adjourned. Absence of complainant is noted on 16.03.2021 and 23.06.2021. However, thereafter he is shown to be present in September and November 2021, 21.01.2022, 10.06.2022, 29.08.2022 and

29.09.2022. Learned Presiding Officer also seems to be on vacation and leave on some dates. Finally, taking into account absence of complainant on 23.02.2023 and 29.04.2023 complaint seems to have been dismissed for want of prosecution.

5. Considering the above 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 18.03.2024.

(ABHAY S. WAGHWASE, J.)