



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL APPLICATION (APPA) NO.761 OF 2023
IN
CRIMINAL APPEAL STAMP NO.4591 OF 2023

M/s Worth Capital Finance Pvt. Ltd., through its Director Rajesh s/o Krishngopal
Lakhotia

Vs.

Prashant Laxmanrao Borkute

Office Notes, Office Memoranda of Coram,
appearances, Court's orders of directions
and Registrar's orders

Court's or Judge's orders

Ms. P. S. Agrawal, Advocate for applicant.
Mr. S. V. Sirpurkar, Advocate for respondent.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17/01/2024

1. Application for condonation of delay in filing leave to appeal under Section 378(4) of the Code of Criminal Procedure.
2. The present application is filed along with appeal against the acquittal. As per the submission of the learned Counsel for the applicant that present applicant is the original complainant who has filed Criminal Case No.8789/2017 under Section 138 of the Negotiable Instruments Act and adduced the evidence. After adducing the evidence, the learned trial Court erroneously acquitted the respondent from the offence punishable under Section 138 of the Negotiable Instruments Act, without considering the presumption which is in favour of the complainant. The appellant

ought to have preferred an appeal within a stipulated period however, authority was given one of the Director to take a decision regarding filing of the appeal and as he has not taken the decision therefore, resolution was passed and the present appeal is preferred. However, the delay 166 days is caused. There is a reasonable and justifiable reason for condonation of delay and hence, application be allowed by condoning the delay and appeal be registered.

3. Learned Counsel for the respondent strongly objected the application on the ground that there are no sufficient and reasonable cause for condonation of delay. The delay is intentional one, in view of that, application deserves to be rejected.

4. Having heard the learned Counsel for the applicant and learned Counsel for the respondent and perused the grounds mentioned in the application, which shows that one of the Director was authorized to take a decision regarding the litigation, however, he was not well and suffering from some disabilities and therefore, he could not proceed and take a decision and, therefore, delay is caused. It is well settled that while considering the delay application lenient approach is to be appreciated and not pedantic approach.

5. Considering the reason mentioned in the application, the delay is properly explained by the applicant and, therefore, application deserves to be allowed. At the same time, it is to be taken into

consideration that belatedly the respondent was dragged in another litigation by the applicant and, therefore, he is to be compensated by awarding the cost.

6. In view of that, the application is allowed subject to the cost of Rs.2,000/- (Rs. Two Thousand). After payment of the cost, appeal be registered along with the application for leave to appeal. The cost is to be paid to the respondent within one month.

7. The criminal application No.761/2023 is disposed of.

(URMILA JOSHI-PHALKE, J.)