



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION NO.62 OF 2024

IN

CRIMINAL APPEAL (ST.) NO.368 OF 2024

(Spacewood Furnishers Pvt. Ltd. Vs. M/s. Excell Engineering Corporation)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. S.A. Thakkar, Advocate for the appellant.

CORAM:- URMILA JOSHI-PHALKE, J.

DATED :- AUGUST 5, 2024.

Heard learned Counsel for the appellant.
Though respondent is served, none appears.

2. This is an application preferred by the appellant seeking leave to file appeal challenging the order dated 01/09/2023 and the respondent is acquitted on the ground that the complainant and Advocate absent. The record reveals that the steps are not taken since long hence, the matter is dismissed for want of steps.

3. Considering the position that the complaint filed by the complainant has been dismissed in default thereby acquitted the accused. It is apparent that it is technical dismissal under Section 256 of the Code of Criminal Procedure, and therefore, leave to file appeal is granted.

4. The application is allowed and disposed of accordingly.

5. The appeal be registered.

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Heard.

2. **ADMIT.**

3. It is the case of the complainant that the complainant is engaged in the business of manufacture and sale of furniture for office/kitchens/modern living under the brand name "Spacewood" at the aforesaid address. The complainant has authorised Vipendra Kumar s/o Chakaudilal Verma who is the Account Manager of the complainant company and who is also authorised to file the complaints on behalf of the complainant company. The accused is a Proprietor concerned having its office at Vishakhapattanam. The accused is a regular customer of the complainant. During the regular course of business the complainant supplied the material on credit and as per the order placed by the accused. The goods were supplied by the complainant to the accused from time to time. The invoice for the sale of goods was raised in the name of the accused as above. The orders were placed at Nagpur and consignment was also delivered from Nagpur. The outstanding balance against the accused was Rs.17,48,847.78/-. Against the said outstanding amount the accused has issued the various cheques. These 8 cheques were deposited by the complainant in his account on 17/11/2018 but the same were received with an endorsement that "Kindly contact Drawer/Drawee bank". As the cheques were dishonoured, the legal notice was

issued on 29/11/2018. After receipt of the notice also the accused failed to comply with the notice, and therefore, the complainant has filed the criminal complaint under Section 138 of the Negotiable Instrument Act, 1881.

4. Learned trial Court has taken the cognizance of the said complaint, recorded the verification and issued the summons to the accused. As accused failed to appear non-bailable warrant was issued against the accused. The report of the said non-bailable warrant was awaiting and on 01/09/2023 the Court has passed the order that the complainant and Advocate absent. Record reveals that steps are not taken since long and hence, the complaint was dismissed for want of steps and accused is acquitted.

5. Learned Counsel for the appellant submitted that as far as the presence of the complainant is concerned which is not required as the complaint was fixed for awaiting the report of the non-bailable warrant. Thus, unless and until the report of the service of the non-bailable warrant was received, it was not for the complainant to take the steps but the learned trial Court has not considered the same and passed an order that absence of the complainant and his Advocate and dismissed the complaint. Thus, entire order passed by the trial Court shows that though the presence of the complainant was not required, the complaint was dismissed. In support of his contention, he placed reliance on the decision of this Court at Aurangabad Bench in the

case of *Murlidhar Vs. Sharangdhar MANU/MH/0597/2011* wherein this Court has considered whether the matter deserved remittance to the trial Court held, complainant as well as accused remained absent before trial Court on various dates. Bailable warrant was issued against accused twice but was cancelled on undertaking given by accused. Accused failed to appear before trial Court despite undertaking. Vital legal rights of complainant were involved and opportunity to be given to complainant to prosecute complaint on its own merits. Principles of natural justice required due hearing to be given to complainant. Proceedings remitted back to trial Court and impugned order set aside. Criminal application and appeal disposed accordingly.

6. He submitted that here in the present case also on similar grounds the trial Court has dismissed the complaint, and therefore, in view of the judgment of this Court the present appeal deserves to be allowed.

7. Considering the aforesaid position and applying the parameters of the cited case law, it is apparent that the facts and circumstances of the said case in hand are the identical. The facts and circumstances in the present case and the cited case are also similar. The case was fixed for report of the execution of the non-bailable warrant and therefore, the steps at the instance of the complainant was not required. Moreover, vital legal point which is involved in the complaint before the trial

Court and the principles of natural justice requires that the opportunity to be given to the complainant to prosecute the said complaint on its own merits, and therefore, matter deserves to be remitted back to the learned trial Court by setting aside the impugned order dated 01/09/2023 with direction to the parties to remain present before the trial Court on 31/08/2024. Simultaneously, the accused shall also remain present before the trial Court on 31/08/2024.

8. In the result, present appeal is allowed.

9. The impugned order dated 01/09/2023 stands quashed and set aside and the matter is remitted back to the learned trial Court with directions to remain present before the said Court on 31/08/2024 at about 11.00 a.m.

10. The learned trial Court to decide the said case on its own merits and parties are also directed to cooperate with the trial Court to dispose of the trial at the earliest.

11. The R. & P be sent back to the concerned trial Court.

12. The criminal appeal stands disposed of accordingly.

(URMILA JOSHI-PHALKE, J.)