



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

49 CRIMINAL WRIT PETITION NO. 605 OF 2025

SUBHASH RAMHANDRA BAGUL

VERSUS

DEVIDAS BANKAT BAGUL

Mr. S.S. Ghodke, Advocate for the petitioner.

CORAM : KISHORE C. SANT, J.

DATE : 22.08.2025

PC :-

01. Heard learned Advocate for the petitioner. The petitioner has challenged an order of rejection of his application for condonation of delay caused in filing complaint under section 138 of the Negotiable Instruments Act. His application came to be rejected by the learned JMFC, Court No.6, Dhule by order dated 05.03.2025.

02. It is case of the petitioner that he had given some amount to the respondent from time to time for labour payment. Total amount given is Rs. 8 lakhs. There were assurance from the respondent that he will pay the amount and towards that amount he issued three cheques, all pertaining to same date i.e. 20.01.2023. Two cheques were for Rs. 3 lakhs and one cheque was for Rs. 2 lakhs. The petitioner presented the cheques in the banks. However, same came to be returned on

21.02.2023, for the reason "funds insufficient". The petitioner issued notice on 14.03.2023 through an Advocate. The notice was returned unclaimed. The petitioner, however, could not file complaint immediately. The limitation was till 29.04.2023. The petitioner is an old aged person and therefore he could not file the case within limitation. Thereafter, he was required to go to USA to his daughter as he had to attend a programme of his grand-daughter in her school. Therefore, he stayed there for two months. After coming back to India, again he was not well and therefore he could not meet his lawyer to instruct him to file complaint. In that process, there is delay of one year and three months in filing the complaint. The petitioner, therefore, prayed for condonation of delay by filing application on 19.07.2024.

03. The learned JMFC issued a notice to the respondent, however, the respondent inspite of service, did not appear. The application proceeded ex-parte. The petitioner, thereafter, filed his affidavit of evidence, reiterating the contents of the application. The applicant by giving affidavit-based evidence filed evidence close pursis. The learned Trial Court considered the affidavit and provisions of Section 148 of the Negotiable Instruments Act. The Trial Court recorded that there is no sufficient reason shown for condonation of delay. From the passport, it

was seen that the petitioner went abroad on 11.06.2023 and came back on 17.08.2023. It is, thus, considered that the limitation for filing the complaint was 29.04.2023. The petitioner left India much after that. The reason given is only blood pressure and diabetes. The Trial Court observed that there is no sufficient reason and rejected the application.

04. The learned Advocate for the petitioner vehemently argued that considering the age of the petitioner, the Trial Court ought to have condoned the delay. For two months, the petitioner was in abroad and therefore he could not file the complaint. Thereafter, he was not well. This fact is not properly appreciated by the Trial Court. He, thus, prays for allowing the petition.

05. This Court has gone through the impugned order. It is seen that the notice was issued on 14.03.2023. It was not claimed on 25.03.2024. Thus, the cause of action to file limitation ends on 29.04.2024. He left India two months thereafter on 11.06.2023. For that period, there is no explanation. Complaint under section 138 of the NI Act is original proceeding. The law of limitation is directly applicable. It was necessary for the petitioner to show what prevented him from filing the complaint. No such reason is coming. Blood pressure and

diabetes cannot be said to be such diseases which would not allow a person to move. On one hand, the petitioner has taken ground that his health was not good and on the other hand he has also taken a ground that he was required to go abroad to his daughter. This Court finds that both the things cannot go together. The Trial Court has also rightly considered that even prior to going abroad, there was sufficient time for the petitioner to file complaint.

06. Considering all the above, this Court does not find any reason to allow this petition. This Criminal Writ Petition stands dismissed.

[KISHORE C. SANT, J.]