



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.108 OF 2025

Shaikh Mujahed S/o. Shaikh Nihal

... Applicant
(Orig. Complainant)

Versus

Bhimrao Pandit Wakle

... Respondent
(Orig. Accused)

.....
Mr. D. M. Shinde, Advocate for Applicant

Mr. Audumbar G. Shinde h/f. Mr. R. V. Gore, Advocate for Respondent

.....

CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 28 NOVEMBER 2025

PRONOUNCED ON : 02 DECEMBER 2025

ORDER :

1. Original complainant, who instituted proceedings under section 138 of Negotiable Instruments Act, 1881 against present respondent, is aggrieved by the dismissal of complaint by invoking section 256 of Cr.P.C. and acquittal of accused by learned Judicial Magistrate First Class (Court No.1), Basmat, Dist. Hingoli in SC.C. No.577 of 2017 and is thereby intending to prefer appeal and hence the instant leave application.

2. Learned counsel for applicant pointed out that, complaint bearing S.C.C. No. 577 of 2017 was instituted for commission of offence

under section 138 of N.I. Act. That, by order dated 03.11.2017, the learned J.M.F.C., after perusal of the complaint and documents on record, was pleased to issue process against the respondent. That, on 29.12.2017, accused appeared before the court and bail was granted. On 07.04.2018 the charge was also framed. That, the accused and his advocate were absent on several dates. That, matter was sent to Lok Adalat on 14.09.2019. Thereafter, matter kept on 18.10.2019. The matter is adjourned for one or other reasons and kept on 21.11.2019. the matter was adjourned for Covid pandemic period from 19.03.2020 to 20.09.2021. Reasons for non prosecution were due to Covid pandemic and as such failure to prosecute. Thereafter, the was adjourned to 25.09.2021. That, on several occasions, NBWs were issued to the accused. That, application for exemption of accused is rejected and NBW is recalled and matter kept on 22.05.2025. However, it is pointed out that, complaint is dismissed in default i.e. for want of prosecution. Learned counsel submits that, complainant is deprived of justice. Moreover, according to learned counsel, learned trial Judge also failed to consider the continuous absence of accused in causing appearance. Therefore, in the interest of justice, he prays to set aside the impugned order by restoring the complaint back on the file of learned JMFC.

3. In answer to above, learned counsel for respondent pointed out that complaint was lodged in the year 2017. According to him, no

doubt, process was issued and accused had also responded to the court proceedings, but complainant himself failed not once, but on several occasions to continue prosecution. Finding complainant absent for sufficiently long, it is submitted that, learned trial Judge has ultimately dismissed the complaint for want of prosecution and it is so permissible also under the law. Resultantly, he prays to refuse leave as according to him no case to that extent is made out.

4. Heard. After considering the submissions and on going through the papers, it seems that, present applicant had instituted proceedings bearing S.C.C No. 577 of 2017 on 28.08.2017. Papers show that, learned trial Judge issued process on 03.11.2017. Copy of roznama at Exh.-C shows that matter was adjourned from time to time and both parties were absent on several occasions. Numerous NBW were issued to accused. Since long time, complainant and his advocate were absent and matter was pending for steps. Finally by order dated 22.05.2025 impugned order has been passed, holding that, none present for complainant and that he is not interested in the conducting the case and hence complaint is dismissed in default.

5. Considering the above, complaint is apparently dismissed only for want of prosecution. Learned counsel orally undertakes to be diligence henceforth and prosecute the matter in trial court regularly.

Resultantly, the application deserves to be allowed. 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 matter for further consideration on 04.12.2025.

(ABHAY S. WAGHWASE, J.)