



IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 25 OF 2025

Shaikh Rauf Shaikh Ismail,
Age: 41 years, Occu. Business,
R/o: Near Habibiya Masjid,
Rahim Nagar, Aurangabad.

... Applicant
(Orig. Complainant)

Versus

Santosh Ramdas Mhaske
Age: Major, Occu. Builder/Contractor,
R/o H No C-2, Rameshwar Nagri,
Jatwada Road, Harsul, Aurangabad.

... Respondent.

AND

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO. 26 OF 2025

Shaikh Rauf Shaikh Ismail,
Age: 41 years, Occu. Business,
R/o: Near Habibiya Masjid,
Rahim Nagar, Aurangabad.

... Applicant
(Orig. Complainant)

Versus

Santosh Ramdas Mhaske
Age: Major, Occu. Builder/Contractor,
R/o H No C-2, Rameshwar Nagri,
Jatwada Road, Harsul, Aurangabad.

... Respondent.

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Mr. Syed Moisali Amjedali, Advocate for Applicants.

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CORAM : ABHAY S. WAGHWASE, J.

RESERVED ON : 30 SEPTEMBER 2025

PRONOUNCED ON : 14 OCTOBER 2025

ORDER :

1. Vide instant applications, original complainant is seeking leave to file appeals against orders dated 17.12.2022 passed below Exh.1 by learned Judicial Magistrate First Class, Aurangabad in S.C.C. No.563 of 2018 and S.C.C. No.564 of 2018, respectively.

2. Learned counsel for applicant submitted that, present applicant filed proceedings under section 138 of Negotiable Instruments Act against present respondent/original accused on the premise that accused had demanded building material to be supplied and complainant, who deals in the same, had duly supplied building material worth of Rs.3,00,000/- as per demand on 14.08.2017. That, towards the same, accused had issued two cheques bearing nos.631345 and 631346 for amount of Rs.1,50,000/- each. However, on its presentation, they were dishonored and therefore, after legal notice and there was no repayment of cheque amount, two separate proceedings under section 138 of N.I. Act were instituted by filing S.C.C. No.563 of 2018 and S.C.C. No.564 of 2018.

3. It is further submitted that, complaint was verified by learned trial court and process was issued. However for want of appearance, learned trial court has dismissed the complaint by orders dated 17.12.2022. Learned counsel submits that for non production of documents and when

complainant failed to secure his presence, matter was directly posted for dismissal and impugned order has been passed. Learned counsel undertakes to diligently prosecute the case henceforth, if applicant be granted leave and the matter be restored before learned trial court for further consideration.

4. In spite of service, none appeared for respondent original complainant. On 30.09.2025, matter was twice called out in the morning session, but none appeared for respondent. Therefore, matter was kept back. Even in second session, none appeared for respondent.

5. Perused the orders dated 17.12.2022. Apparently complaints are of 10.01.2018. It seems that, matter appeared on the board on 13.09.2022, 11.10.2022, 15.11.2022, 02.12.2022 and finally on 17.12.2022. Learned trial court has further observed that matter was lingering on the board without any progress. Complainant and his counsel failed to appear and take steps on several dates, and therefore, the learned trial court passed the order of dismissal for want of prosecution.

6. It also appears that, on 22.1.2018, the learned trial court had passed order below Exh.1, stating therein facts of the complaint and found that all fundamental ingredients of offence punishable under section 138 of

N.I. Act, were prima facie appearing. Accordingly the court decided to issue process against accused, and by invoking provisions under section 204(1) (a) of the Cr.P.C., summons were issued to accused. Impugned order also shows that for not taking steps by complainant and he failed to secure his presence, matter has been directly posted for dismissal and after 3 to 4 days, finally the matter has been dismissed for want of prosecution.

7. Considering the above, in the interest of justice and in view of the statement made across the bar that applicant is ready to diligently workout the matter, a last chance is granted to prosecute the matter. Accordingly leave as prayed deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Both applications stand allowed.
- (ii) Leave is granted to file Appeals.
- (iii) Registry to register the Appeals.
- (iv) List the appeals for further consideration on 15.10.2025.

(ABHAY S. WAGHWASE, J.)