

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY  
CIRCUIT BENCH AT KOLHAPUR  
CRIMINAL APPELLATE JURISDICTION**

**APPLICATION FOR LEAVE TO APPEAL (PVT.) NO. 207 OF 2024**

Balaso Ramchandra Rakate

.... Applicant

**Versus**

Sarvajit Govindrao Kadam and Anr.

.... Respondents

-----

Mr. Bhushan Walimbe a/w Mr. Mayank Tripathi, Advocate for the Applicant.

Ms. Veera Shinde, A.P.P., for the Respondent – State.

-----

**CORAM : SHIVKUMAR DIGE, J.**

**DATE : 14<sup>th</sup> OCTOBER, 2025.**

SHANTANU  
SHANKARSA  
DHUDUM

Digitally signed  
by SHANTANU  
SHANKARSA  
DHUDUM  
Date:  
2025.10.15  
19:52:30 +0530

**P.C. :**

1. Heard learned counsel for the Applicant and learned APP for the Respondent – State.
2. By this application, the Applicant is challenging the order dismissal for default passed by the learned Judicial Magistrate First Class, Islampur (for short, “JMFC”).
3. It is contention of learned counsel for the Applicant that the Applicant had filed complaint against the Respondent No.1 under Section 138 of the Negotiable Instrument Act, (for short, “NI Act”). The Applicant was pursuing the said complaint diligently, but on 23<sup>rd</sup>

July, 2024 the learned JMFC dismissed the said complaint for non-prosecution. Learned counsel further submitted that on that day, the Advocate for the Applicant was present. He had filed an application for extension of time to give the evidence, but the said application was rejected and complaint was dismissed, which is erroneous. Hence, requested to allow the application.

4. Though, Respondent No.1 is served, none present for the Respondent No.1. On the last date, last chance was given to Respondent No.1 to go on with the matter. Even today, none present for Respondent No.1. Hence, I am deciding this application on merit.

5. I have heard learned counsel for the Applicant.

6. It appears from the record that on some dates the Applicant and his Advocate were absent before the learned trial Court, but they were present on the previous two dates before the dismissal of complaint. On the day of dismissal of complaint, the application for adjournment was filed, but it was rejected, on the ground that complainant did not appear. Apparently, the order passed by the learned JMFC is perverse. The learned JMFC should have given a fair opportunity to the Applicant to pursue his complaint.

7. In view of above, I pass following order:

**ORDER**

- i. The application is allowed.
  - ii. The order passed below Exhibit-1 dismissing the complaint of the Applicant for non-prosecution is quashed and set aside.
  - iii. The complaint is restored to file.
  - iv. The order of rejecting the application of the Applicant for giving evidence is also quashed and set aside.
  - v. The Applicant is permitted to give the evidence before the trial Court.
  - vi. The Applicant shall appear before the trial Court on 10<sup>th</sup> November, 2025 at 11:00 a.m.
8. In view of the aforesaid terms, the application is allowed and accordingly disposed off.

( SHIVKUMAR DIGE, J.)