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IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

INTERIM APPLICATION NO. 178 OF 2021

IN

CRIMINAL APPLICATION NO. 57 OF 2018

WITH

INTERIM APPLICATION NO. 177 OF 2021

IN

CRIMINAL APPLICATION NO. 331 OF 2017

WITH

INTERIM APPLICATION NO. 179 OF 2021

IN

CRIMINAL APPLICATION NO. 324 OF 2017

WITH

INTERIM APPLICATION NO. 183 OF 2021

IN

CRIMINAL APPLICATION NO. 323 OF 2017

Sagar Earth Movers through Proprietor Shaikh Nisar Shariffoodin … Applicant

vs.

Exotic Developers and Builders through Proprietor Rajesh Natwarlal Lakhani … Respondent

Mr. Satyajeet P. Dighe, for Applicant

Ms. Shilpa G. Talhar, APP for the Respondent-State.

CORAM : GAURI GODSE, J.

DATED : 24th DECEMBER 2025

ORDER:

INTERIM APPLICATION NO. 178 OF 2021, INTERIM APPLICATION NO. 183 OF 2021, INTERIM APPLICATION NO. 179 OF 2021 AND INTERIM APPLICATION NO. 177 OF 2021

1. These applications are for restoration of the criminal applications for condonation of delay in filing applications for leave to file an appeal. The applications were dismissed in view of the conditional order dated 21st November 2019, granting time to complete service before the returnable date.

2. Learned counsel for the applicant submits that copies for effecting service were supplied in the department. He submits that the advocate was under the bonafide impression that the conditional time was for supplying copies. However, the conditional time was granted to complete the service before the returnable date. Hence, the applications stood dismissed. Learned counsel for the applicant therefore submits that the applications be restored and the applicant be given an opportunity to argue the applications on merits.

3. In view of the reasons stated in the application the delay is condoned and the applications are allowed in terms of prayer clause (a) and (a1).

CRIMINAL APPLICATION NO. 57 OF 2018, CRIMINAL APPLICATION NO. 323 OF 2017, CRIMINAL APPLICATION NO. 324 OF 2017 AND CRIMINAL APPLICATION NO. 331 OF 2017

4. These applications are filed by the original complainant under Section 378(4) of the Criminal Procedure Code, seeking leave to file appeal. The applicant is the complainant in the complaint filed under Section 138 of the Negotiable Instruments Act, 1881. By the impugned order the respondent is acquitted.

5. Learned counsel for the applicant submits that in view of the recent decision of the Hon'ble Apex Court in the case of ***M/s. Celestium Financial Versus. A. Gnanasekaran***[1], the applicant would be entitled to file an appeal under Section 372 of Code of Criminal Procedure. He therefore seeks leave to withdraw this application with liberty to file an appeal under Section 372 of Cr.P.C. in the Sessions Court. Learned counsel for the applicant submits that the applicant be granted benefit of the period of pendency of this application for seeking condonation of delay.

6. In view of the legal principles settled in the decision of the Hon'ble Apex Court, the applicant is granted leave to withdraw this application with liberty to file an appeal under Section 372 of Cr.P.C.

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before the Sessions Court.

7. The criminal applications for leave to file an appeal are filed after a period of limitation. Hence, the applicants have filed these criminal applications for condonation of delay. These applications are filed on 19th January 2021. Hence, it is clarified that if an appeal under Section 372 of Cr.P.C. is filed within eight weeks from today, the applicant shall be entitled to seek benefit of the period of pendency of this application for seeking condonation of delay in filing the appeal before the Sessions Court.

8. Learned advocate for the applicant is permitted to take back certified copy of the impugned order for filing the appeal in the Sessions Court, on submitting a photocopy of the impugned order. Registry shall verify the photocopy and return the certified copy to the learned advocate for the applicant.

9. The Applications are disposed of as withdrawn subject to the aforesaid liberty.

(GAURI GODSE, J.)