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

Criminal Application No.737 of 2024

Pankaj Satishkumar Gupta
Adult 55 years, Occupation
-Service, residing at 602-A,
Paradise Raheja Vihar, Powai,
Mumbai- 400 072

... Applicant
(Original Complainant and
Respondent in Criminal Appeal)

versus

1. Ramnivas Janardhan Agarwal
Adult, Occu-Business, residing
at Bungalow No.2
Plot No.257, Bungalow Co-Op.
Housing Society Ltd.,
Near OLPS Church,
Central Avenue Road,
Chembur, Mumbai - 400 071

... Respondent
(Orig. Accused and
Appellant in Criminal Appeal)

2. The State of Maharashtra

... Respondent

Mr Prasad D Borkar, a/w. Mr Manoj Borkar, for the applicant.
Mr Deepak Sharma, i/b. Mr Arvind Yadav, for respondent No.1
(through VC).

Mr Swapnil Pednekar, APP, for respondent No.2/ State.

**Coram: R.N. Laddha, J.
Date: 28 February 2025.**

P.C.:

. Heard learned Counsel for the parties.

2. The basic facts are undisputed. The respondent No.1/original accused and appellant in Criminal Appeal (hereinafter referred to as 'the accused') was convicted for an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('the NI Act'), by the Metropolitan Magistrate, 63 Court, Andheri, Mumbai, vide judgment and order dated 27 July 2022, in CC No.4563/SS/2015. Consequently, the accused was convicted. Additionally, he was directed to pay compensation of Rs.91,00,000/- along with 6% interest to the complainant.

3. The conviction and sentence as aforesaid, were carried in appeal by the accused before the Sessions Court at Dindoshi, Mumbai and on 21 September 2022, the Court suspended the sentence subject to payment of 20% compensation amount i.e. Rs.18,20,000/-, be paid within a period of two months. On 21 November 2022, respondent No.1 applied for an extension of time to pay the compensation and to furnish surety. Subsequently, on 16 January 2023, the applicant/ original complainant (hereinafter referred to as 'the complainant') filed an application for cancellation of bail. However, accused's

request for an extension was granted, allowing an additional two weeks to comply with the 21 September 2022 order, while the complainant's request was scheduled for further consideration.

4. On 9 February 2023, respondent No.1 again sought an extension to deposit the 20% compensation amount, submitting medical reports in support. The Court granted this extension as a final opportunity. Subsequently, on 2 March 2023, accused made another request for an extension, submitting a development agreement, brochure, title certificate of the plot allegedly being sold to arrange funds, and an undertaking to deposit the 20% compensation amount by 20 March 2023. Based on this undertaking, the Court granted the extension as a last chance.

5. On 20 March 2023, accused applied to deposit Rs.2,00,000/- as part payment and requested further time to pay the remaining amount. The Court granted an additional four weeks for compliance. On 17 April 2023, accused sought another extension, which the Court granted as a final opportunity.

6. On 25 September 2023, accused once again applied for

more time to deposit the remaining compensation, and the Court granted a four-week extension as a last chance. On 23 January 2024, accused requested a reduction in the 20% compensation amount, but this application was rejected. The complainant's request for bail cancellation was also denied.

7. On 30 January 2024, the complainant sought to set aside the 21 September 2022 order suspending accused's sentence. However, on 18 April 2024, the Court rejected this application, upholding the suspension of the sentence. Aggrieved thereby, the complainant has filed this application for setting aside the impugned order dated 18 April 2024, which rejected the application filed by the complainant against the accused. The complainant also seeks to set aside the order of suspension of sentence due to non-compliance with the order dated 21 September 2022, passed by the learned Sessions Judge at Dindoshi, Mumbai, in Criminal Appeal No.264 of 2022.

8. At the outset, it is important to note that in 2015, the complainant filed a case against the accused under Section 138 of the Negotiable Instruments Act. The records show that the accused repeatedly filed applications seeking extension of time to deposit the compensation amount, and the learned Judge granted these extensions based on the belief that the accused

would fulfill his obligation. However, the accused consistently assured the Court that he would deposit the remaining compensation amount, sought extensions, and submitted undertakings, but ultimately failed to comply. The records further reveal that accused obtained a banker's cheque of Rs.11,00,000/-, dated 9 May 2023, but deliberately chose not to deposit it by seeking the Court's permission, indicating a clear intent to delay the proceedings. Additionally, it appears that the accused misled the Court by making false statements in his applications, knowing them to be untrue. While rejecting his application for a reduction in the compensation amount, the learned Sessions Court noted that the order dated 21 September 2022, suspending the sentence, had been passed by his predecessor after considering the factual aspects of the case. The learned Judge further observed that modifying the previous order regarding the 20% compensation amount was neither just nor appropriate and dismissed the application, stating that it lacked merit. Notably, it is not the case of the accused that he is ready to argue appeal finally.

9. The conduct of the accused-specifically, his failure to deposit the banker's cheque of Rs.11,00,000/- in May 2023, despite bringing it to the Court demonstrates his intention to delay the proceedings and a breach of the undertaking he had

given in his application dated 2 March 2023. The learned Judge by an order dated 9 October 2023, had already directed the accused to comply with the order passed on 21 September 2022. On 14 November and 26 November 2024, the learned Counsel for the accused stated before this Court that the accused would deposit the remaining compensation amount in four weekly instalments. Additionally, the accused agreed to deposit Rs.1,00,000/- as interest for the delay and provided a payment schedule. However, the accused now claims that he is unable to pay the remaining 20% of the compensation due to his ill-health.

10. As a result, the impugned order dated 18 April 2024, rejecting the application filed by the complainant against the accused, is hereby set aside.

11. The criminal application stands disposed of accordingly.

(R.N. Laddha, J.)