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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR

CRIMINAL REVISION APPLICATION NO.127 OF 2024

Ajay s/o Maheshkumar Dixit,
Aged about 58 Years,
Occupation : Service,
R/o Jain Mandir Ward,
Hinganghat, District Wardha.

.... APPLICANT

// VERSUS //

Ashok s/o Hiralal Baisware,
Aged about 68 Years,
Occupation : Retired,
R/o Shivaji Ward, Hinganghat,
District Wardha.

.... NON-APPLICANT

Mr. Tejas S. Deshpande, Counsel for the Applicant.
Mr. R. A. Bhandakkar, Counsel for the non-applicant.

CORAM : URMILA JOSHI-PHALKE, J.
DATED : 17.02.2025

ORAL JUDGMENT :

1. By this revision application, the applicant has challenged the order passed by the learned Additional Sessions Judge (Court No.2), Hinganghat, rejecting the application of condonation of delay which is caused in preferring the appeal against the conviction for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I. Act'), vide Judgment dated 15.03.2024 in S.C.C. No.17/2020.

2. The applicant was prosecuted for the offence punishable under Section 138 of the N.I. Act. As there was a transaction

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between the applicant and non-applicant. Towards the legal and enforceable debt as alleged, he has issued a cheque bearing No.190502 dated 22.11.2019 for a sum of Rs.40,000/-. The said cheque was presented, but it was returned back as 'insufficient funds'. After issuing the notice, the non-applicant has filed a complaint under Section 138 of the N.I. Act. The non-applicant has also adduced the evidence and after appreciation of the evidence, the learned Judicial Magistrate First Class, Court No.3, Hinganghat convicted the present applicant to undergo simple imprisonment for 11 months and pay Rs.80,000/- to the non-applicant towards compensation, in default the applicant to suffer simple imprisonment for a period of three months.

3. Being aggrieved and dissatisfied with the said Judgment, the applicant preferred an appeal, but there was a delay of 77 days caused in preferring the appeal, therefore, he filed an application for condonation of delay. The application for condonation of delay was filed on the ground that on account of communication gap between himself and his Counsel and there was summer vacation and therefore, he could not file an appeal within time, and therefore, delay of 77 was caused and it be condoned.

4. Learned Additional Sessions Judge, after considering the reply filed by the respondent/non-applicant, rejecting the

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application on the ground that there is no sufficient and satisfactory reason for condonation of delay.

5. Being aggrieved and dissatisfied with the same, the present revision is filed by the applicant on the ground that learned Additional Sessions Judge has not considered that there is a sufficient and reasonable cause for condonation of delay. The applicant is a layman who is not aware about the legal provisions. Moreover, the learned Additional Sessions Judge ought to have considered that filing of appeal against the order of conviction is a fundamental right, guaranteed to the applicant under Article 21 of the Constitution of India and the learned Additional Sessions Judge has taken a technical view which restrains and also violates the fundamental right of the present applicant. In view of that, the application deserves to be allowed and the order passed by the learned Additional Sessions Judge deserves to be quashed and set aside.

6. Heard learned Counsel for the applicant who supported the said contentions as per the contention raised in the application, whereas the learned Counsel for the non-applicant strongly opposed the said application on the ground that the discretion is used by the learned Additional Sessions Judge in a proper manner. There should be a reasonable and satisfactory reason for the condonation of delay, and therefore, the application deserves to be rejected.

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7. After hearing both sides and on perusal of the entire record, it reveals that the delay condonation application is rejected only on the ground that there is no reasonable and justifiable reason for condonation of delay. Admittedly, the applicant was convicted on 15.03.2024. He made an application for suspension of sentence which came to be allowed and the sentence was suspended for 30 days. The application filed on 27.06.2024 however, it was actually filed on 29.06.2024. There has been delay of 77 days. The application shows the reason that there was miscommunication between the Counsel and the applicant and there was a summer vacation, and therefore, he could not file an appeal. Admittedly, the law is settled on the aspect that there should be reasonable and satisfactory reasons for the condonation of delay. However, the law is also settled that while considering the delay condonation application, the liberal approach is to be taken and not the pedantic approach. The parties are allowed to fight the litigation on its own merits. In a criminal matter, where the life and liberty of a person is in question, one's right of appeal has always been accepted and an appropriate steps must be taken to effectuate that right. The considerations on account of delay and limitation ought not to be considered to deny the right of the appeal in hearing an accused. Admittedly, the applicant was directed to deposit the amount of Rs.80,000/- while convicting him. The applicant has dragged the non-applicant in unnecessary litigation

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and he has to incur some expenses towards the said litigation and therefore, the applicant shall at least deposit 50% of the compensation amount within four weeks before the trial Court and the non-applicant is at liberty to withdraw the same. In view of that, I proceed to pass following order:

ORDER

- (i) The revision application is allowed.
- (ii) The order passed by the learned Additional Sessions Judge, (Court No.2), Hinganghat in Other Misc. Criminal Application No.13/2024 is hereby quashed and set aside.
- (iii) The delay of 77 days is hereby condoned.
- (iv) The parties to appear before the Additional Sessions Judge, (Court No.2), Hinganghat on 10.03.2025.
- (v) The applicant shall deposit the amount of Rs.40,000/- within four weeks before the trial Court.
- (vi) On failure of depositing the amount, the order passed by the learned Additional Sessions Judge (Court No.2), would survive.

The revision application is disposed of.

(URMIL A JOSHI-PHALKE, J.)

Sarkate.