

2024:BHC-AUG:10887

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ALP-230-2018

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

APPLICATION FOR LEAVE TO APPEAL BY PVT. PARTY NO.230 OF 2018

Jaikiran Prabhaji Nagari Sahakari
Patsanstha Maryadit, Pachora,
Shop No. 115 to 118,
Mahatma Gandhi Shopping Complex,
Jamner Road, Pachora,
Taluka Pachora, Dist. Jalgaon.
Through the Recovery Officer
Rajesh Chandulal Jain,
Age : 43 years, Occu. : Service,
R/o. House No. 2366, Near Mithabai School,
Kondwada Galli, Jamner Road, Pachora,
Taluka - Pachora, District - Jalgaon.

Versus

**... Applicant/
Appellant**
(Orig. Complainant)

Santosh Chudaman Patil,
Age : 45 years, Occu. Agriculture,
R/o. Village - Samner,
Taluka - Pachora, Dist. Jalgaon.

... Respondent
(Orig. Accused)

...
Mr. Pushkar S. Shendurnikar, Advocate for Applicant/Appellant
...

CORAM : ABHAY S. WAGHWASE, J.

DATED : 12th JUNE 2024

ORDER :

1. This leave application is at the instance of original complainant, who had initiated proceedings under section 138 of the Negotiable Instruments Act, 1881, seeking leave to file appeal against order of dismissal in default passed by learned Judicial Magistrate First Class, Pachora dated 24.09.2018 in S.C.C. No. 79 of 2015, resulting into acquittal of respondent accused.

2. Learned Advocate for applicant submitted that, there was loan transaction to the tune of Rs.30,000/-. Cheque towards repayment was issued by accused, however it was returned dishonored and after legal notice, when amount was not paid, proceedings under section 138 of Negotiable Instruments Act, 1881 (N.I. Act) were instituted on 05.02.2015. However, merely on account of absence on only one date, learned trial court has dismissed the complaint for want of prosecution. He pointed out that, there is a good case on merits. However, due to dismissal for want of prosecution, complainant - applicant has suffered injustice and so he seeks relief as prayed.

3. On 08.02.2019, this Court had issued notice to respondent. On 08.03.2019, learned Advocate Mr. J. M. Wagh (Patil) appeared on behalf of respondent and on 18.01.2024, on his request his appearance was discharged. On 18.01.2024, this court again issued notice to respondent and the same is duly served on him 31.01.2024. However, none appeared for respondent, in spite of sufficient chance.

4. Heard. Perused roznama. It seems that, proceedings under section 138 of N.I. Act bearing S.C.C. No. 79 of 2015 was instituted. It seems that, learned trial court had issued process on 06.02.2015. Thereafter, original complainant is shown to be

present on 28.06.2018, 06.08.2018, 30.08.2018 and 08.09.2018. However, in view of absence of complainant only on 24.09.2018, complaint seems to have been dismissed for want of prosecution. Learned Advocate for the applicant submits that, on 24.09.2018, the person authorized to represent the applicant credit society, though was present before the court in the first half, due to ongoing tax audit of the applicant society, was constrained to leave the court during second half. Record shows that, same day i.e. on 24.09.2018, original complainant had also filed application for restoration of complaint, however the same seems to have been rejected by learned Judicial Magistrate First Class, Pachora.

5. Considering the above discussed material and in view of a fair opportunity to contest the proceedings, leave deserves to be granted. Hence, I proceed to pass the following order :-

ORDER

- (i) Application stands allowed.
- (ii) Leave is granted to file Appeal.
- (iii) Registry to register the Appeal.
- (iv) List the appeal for further consideration on 20.06.2024.

(ABHAY S. WAGHWASE, J.)