

IN THE HIGH COURT OF BOMBAY AT GOA.

(LD-VC-CRI-25/2020)

VPK Urban Co-op.
Credit Society Ltd.,

..... Petitioner.

Vs

Sanjay Manohar Kalangutkar

..... Respondents.

Shri J. Ramaiya, Advocate for the Petitioner.

Coram:- DAMA SESHADRI NAIDU, J.

Date: 8th October 2020.

PC.

The petitioner filed a complaint under Section 138 of the Negotiable Instruments Act against the respondent. It was before the Judicial Magistrate, First Class at Mapusa. But the petitioner presented that application with a delay of 11 days. To have that delay condoned, the petitioner has also applied to the trial Court. On the day the trial Court fixed the delay condonation application for hearing, the petitioner's counsel could not be present. Therefore, the learned Magistrate dismissed the complaint for non-prosecution. Assailing the order of dismissal, the petitioner has come before this Court.

2. Shri Jatin Ramaiya, the learned counsel for the petitioner, submits that it is not the case of gross negligence on the part of the petitioner or his counsel. Under unavoidable circumstances, the petitioner's counsel reached the court a little late. But, by then, the trial Court dismissed the application. As the trial Court lacked the inherent powers of recalling the order, it has necessitated the petitioner's approaching this Court.

3. Despite service of notice, none appears for the respondent.

4. As rightly contended by Shri Ramaiya, the absence of the petitioner or his counsel on that particular date does not display any gross

dereliction on his part. In fact, the petitioner pleads that the counsel did attend the trial Court on that day, but he was a little late.

5. Under these circumstances, it serves the interest of justice if this Court sets aside the impugned order and restores the matter to the file. I do so.

DAMA SESHADRI NAIDU, J.

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