

IN THE COURT OF METROPOLITAN MAGISTRATE,
28TH COURT, ESPLANADE, MUMBAI

C. C. No.2800427/MISC/2021

ORDER BELOW DELAY CONDONATION APPLICATION

1. This is an application made by complainant under Section 138 of the Negotiable Instrument Act (for the sake of brevity hereinafter referred to as “ N. I. Act ” in short) for condonation of delay of 725 days caused for filing complaint under Section 138 of N. I. Act. It is alleged in the application that, settlement talks were going on between the complainant and accused, hence the delay in filing the present complaint. Therefore, he prayed for condonation of delay.

2. On the application being made, notice was issued to accused/opponents. The complainant has filed service affidavit on record. Despite of service of notice, accused/opponents did not appear either themselves or through advocate. So application is proceeded Ex-parte against accused/opponents.

3. To substantiate the averments made in the application, complainant/applicant has filed his affidavit reiterating the contents of delay condonation application. Further more, if present application is allowed, accused will have right to oppose the case of complainant during the trial. So no prejudice is likely to be caused to the accused/opponents. On the contrary, if present application is not allowed, it will amount to shut down the case of complainant/applicant without being given an opportunity to place the evidence on record. The delay is of 725 days. So I am of the opinion that liberal approach is required to be taken while condoning the delay. Therefore, considering all above facts and

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circumstances, in my opinion, it would be reasonable to condone the delay subjected to costs to be paid to accused after his appearance in the main case. Hence, I pass following order.

ORDER

1. Application is hereby allowed.
2. Delay of 725 days caused for filing complaint under Section 138 of N. I. Act is hereby condoned subjected to costs of Rs.10,000/- to be paid after the appearance of accused in the main case.
3. Registry is hereby directed to register a complaint.

Date : 14/03/2022

(Yashshree Marulkar)
Metropolitan Magistrate,
28th Court, Esplanade, Mumbai.