

ORDER BELOW EXH. 14 IN SUMMARY CRI.CASE NO.365/15

This complaint is under section 138 of the Negotiable Instruments Act.

2. At the time of argument as regards issue process, it was found that acknowledgement receipt of Post does not bear date on which notice was received by the accused. Therefore, complainant produced reply of complaint by post office dated 16-11-2015, which states that notice in matter in hand was delivered on 12-9-2015. But in complaint date of delivery of notice is mentioned as 21-9-2015 which shows that date of delivery of notice is not correctly mentioned. But it does not *ipso facto* makes complaint futile.

3. In this scenario, complainant moved this application praying for condonation of delay. Complainant received reply of complaint letter on 16-11-2015 from the Postal Authority. It is argued that no receipt of acknowledgement received by the complainant, therefore, date of receipt of notice mentioned as 21-9-2015 in complaint. Though it is so mentioned, letter of Post states that date of receipt of notice by accused is 12-9-2015. It is contended in this application that delay is not deliberate on the part of complainant. Considering the facts and circumstances, it appears that as acknowledgement receipt does not mention date of receipt of notice by accused, so also postal stamp is not properly visible so as

to ascertain the date. Therefore, it appears that delay is without any fault on the part of complainant. Moreover, notice of this application was sent to the accused, which was received by him vide Exh. 15. Despite of it, accused not turned up. Therefore, this application has proceeded ex parte. Delay to lodge complaint under section 138 of N.I.Act can be condoned at any stage. Considering this aspect, it appears that there is sufficient ground to condone the delay. Hence, I pass following order

ORDER

Delay is hereby condoned.

sd/-

Dated :-7-7-2016

Judicial Magistrate,F.C.
Gadhinglaj