

ORDER BELOW EXH. 41 IN C. C. NO. 1423/SS/2016

- 1) This is an application made by the accused for setting aside no cross order dated 18.11.2022.
- 2) It is contended by the accused that, due to personal difficulty of the Ld. Advocate of accused, he was unable to remain present before the Court for conducting cross-examination of the complainant. No cross order has been passed due to absence of the Ld. Advocate.
- 3) The complainant has strongly opposed the application by reply Exh. 42. It is contented that, already no cross order was set aside once with a condition to deposit 50% of the cheque amount. The said order was challenged by the accused vide Criminal Revision Application No. 245/2022. The said Revision Application was allowed with a condition that, the accused would not seek adjournment. However, the accused sought adjournment and no cross order was passed. On these major grounds, the complainant has prayed for rejection of the application.
- 4) Heard both sides. Perused record.
- 5) The case is for offence punishable under section 138 of the Negotiable Instruments Act. The case is of the year 2016. The case falls in the category of 5+ years old cases. There are constant directions for expeditious disposal of old cases. Section 143(3) of the Negotiable Instruments Act prescribes that an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint. The evidence affidavit was filed on 20.02.2019. The accused failed to avail the opportunity of conducting cross-

examination of the complainant. Therefore, the cross-examination was closed on 15.11.2021. Thereafter, the accused made application Exh. 35 for setting aside the no cross order. The said application was allowed by my Ld. Predecessor subject to depositing 50% of the cheque amount in the Court. The said order was challenged by the accused vide Criminal Revision Application No. 245/2022. The said Revision Application was allowed on 07.04.2022. The Hon'ble Additional Sessions Court had directed the accused to conduct cross-examination **without seeking adjournment**.

6) On 18.11.2022, the complainant was present. However, the accused sought adjournment on the ground that his Ld. Advocate is unable to attend the Court due to his personal difficulty. The said application was rejected and no cross order was passed.

7) As mentioned above, the matter is more than five years old. Sufficient time was granted to the accused for conducting cross-examination of the complainant. The accused has not followed the directions given by the Hon'ble Additional Sessions Court in Criminal Revision Application No. 245/2022. It is evident that, the accused is designedly protracting the trial of the case. No reason made out for setting aside the no cross order. Thus, the application is liable to be rejected. Hence, order :

ORDER

Application Exh. 41 is rejected.

Sd/-

(Mahesh V. Phade)

Metropolitan Magistrate,
7th Court, Dadar, Mumbai

Mumbai
Date : 23.02.2023