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Exh 10

**IN THE
COURT OF SESSION
SESSIONS DIVISION, SINDHUDURG
AT: OROS**

[Presided over by Dr Sudhiir M Deshpande]
SESSIONS JUDGE, SINDHUDURG.

Criminal Revision Application No. 29 of 2023
(CNR CNR MHSIo10007802023)

Anjali Pradeep Sawant

Age about 55 yrs., Occu.: Housewife
R/o X-96/8, Godrej Station Colony
Fhiroj Shah Nagar, Vikroli (East)
Mumbai 400 079

Applicant

Versus

1. Dinesh Nana Sawant

Age about 54 yrs., Occu.: Business
R/o Urvi Park, Block No. 612
Opp. Oswal Park, Maziwada
Thane (West) and working at Central
Railway MCTS, Mumbai 400 001

2. Suresh Malvankar

Age: 50 yrs., Occu.: Business
R/o Sawantwadi
Tal. Sawantwadi Dist. Sindhudurg

Opponents

3. Sushma Bimbawnekar

Age: 35 yrs., Occu.: Housewife
R/o Sawantwadi
Tal. Sawantwadi Dist. Sindhudurg

Appearance:

Mr A S Patel, Ld advocate for the applicant

Mr S S Sawant, Ld advocate for the opponent No. 1

Mr J S Samant, Ld advocate for the opponents No. 2 and 3

JUDGMENT

(Declared on 31st day of March, 2026)

The present revision application has been filed by the original complainant challenging the order dated 10.07.2023 passed by the learned Judicial Magistrate First Class, Kudal in Regular Criminal Case No. 4/2018, whereby the Trial Court dismissed the complaint for default. Being aggrieved by the said impugned order, the complainant has preferred this revision application, and the original accused have been arrayed as opponents herein.

2] Heard.

3] Mr Patel, learned counsel for the applicant (original complainant), submits that he is advancing common arguments in both revision applications arising from the impugned orders dated 05.03.2018 and 10.07.2023, refusing direction u/s 156(3) and dismissing the complaint, respectively. He contends that both revisions are maintainable; he argues that the trial Court falsely dismissed the complaint even when the complainant wanted to pursue it. He submits that there was corona period and therefore the complaint proceeding could not be attended for some time. He submits the dismissal order dated 10.07.2023 need to be set aside. The complainant needs to be given an opportunity to prove her allegations. He submits the accused will always have the chance of moving discharge application.

4] On the order dated 05.03.2018 he submits that investigation under Section 156(3) CrPC is necessary as the

matter involves serious allegations of cheating and forgery, and that the non-filing of an affidavit should not defeat the complainant's just cause, particularly when a fair trial is sought; he further explains that due to the COVID-19 pandemic, the applicant could not effectively pursue the proceedings on each date, and alleges that the accused brothers have committed forgery to grab property, while characterizing the Magistrate's order dated 05.03.2018 as mechanical and passed without proper application of mind, and therefore prays that both revision applications be allowed and the Magistrate be directed to order an investigation under Section 156(3) CrPC.

5] Mr Sawant, learned advocate for Opponent No. 1, submits that both the impugned orders are proper and legal and do not warrant interference; he contends that there is no element of forgery involved and places reliance on paragraph 7 of the order dated 05.03.2018 as being significant, further arguing that the revision applications are not maintainable as both the orders are interlocutory in nature.

6] Mr Samant, learned counsel for Opponents No. 2 and 3, submits that these opponents are merely witnesses to the documents in question and ought not to have been implicated in the present case at all; he contends that they have been unnecessarily subjected to hardship since 2018, and therefore both revision applications deserve to be dismissed, as the impugned orders are correct and justified, further emphasizing that the trial court cannot be expected to keep matters pending indefinitely while awaiting parties to

take steps to prosecute the case.

7] In reply, Mr Patel submits that the complainant lady is the real sufferer and is only seeking a fair trial; he contends that the opponents have adequate remedies available in law, including the right to defend themselves and to file an application for discharge, and therefore submits that both revision applications deserve to be allowed.

8] After hearing the rival submissions and perusing the documents on record, the following points arise for my determination, on which I have recorded my findings with reasons upon consideration of the material on record and the arguments advanced.

Points	Findings
1. Whether the Trial Courts' order is correct, legal and proper?	Yes
2. Whether the Trial Court has conducted any irregular proceeding?	No
3. What Order?	The revision application is dismissed.

REASONS

As to Point No. 1 and 2

9] The contention that the impugned order is interlocutory in nature is not tenable in law. An interlocutory order is one that is purely interim and does not affect the substantive rights of the parties. The order dated 10.07.2023 dismissing the complaint for default cannot be termed

interlocutory, as it results in termination of the proceedings and substantially affects the rights of the complainant. Therefore, the impugned order cannot be classified as an interlocutory order. The revision application is, therefore, tenable.

10] The scope of the revisional court is circumscribed and supervisory in nature, confined to examining the correctness, legality, and propriety of the impugned order, as well as the regularity of the proceedings before the learned Magistrate. It is well settled that revisional jurisdiction is not equivalent to appellate jurisdiction and does not permit a re-appreciation of evidence or substitution of the court's own findings merely because another view is possible. The revisional court is primarily concerned with jurisdictional errors, patent illegality, material irregularity, or manifest perversity in the order under challenge. Interference is therefore warranted only where the impugned order suffers from non-application of mind, is arbitrary or perverse, or where there has been a miscarriage of justice owing to procedural impropriety or illegality committed by the trial court.

11] I have perused the impugned order dated 10.07.2023. The complaint is dismissed for default. The impugned order passed by the Trial Court is like this (verbatim):

Perused the record and Rojnama. This complaint is filed for the offence punishable U/sec. 406, 418, 420, 465, 468, 471, 120(B) of Indian Penal Code. The complaint is instituted on 22/01/2018. Matter is posted for recording of verification statement of the

complainant. The record shows that the complainant consistently remained absent in the court. On perusal of Rojnama it reveals that, on 10/01/2023 order was passed below Exh.1 and matter was kept for necessary further order. Since then the complainant does not appear before the Court. The conduct of the complainant shows that she is not willing for proceed with the complaint.

02. From the Roznama it reveals that the complainant consistently remained absent in the court. Form the conduct of the complainant, it seems that, she is not interested to proceed with the matter, therefore no need to keep pending the matter on board. In the result, I pass the following order.

ORDER

The complaint is dismissed for default.

12] The order is self-explanatory. Once a complaint is instituted, it is incumbent upon the complainant to prosecute it diligently and with due regularity. From the tenor of the impugned order, it is evident that the Trial Court had granted several opportunities to the complainant, but to no avail. The Trial Court has specifically observed that the conduct of the complainant indicated a lack of willingness to proceed with the complaint. The complaint was filed on 22.01.2018, and on 10.01.2023 an order was passed below Exhibit 1, thereafter keeping the matter for further necessary orders. However, from that date onwards, the complainant failed to remain present before the Trial Court. Mr. Patel, learned counsel for the complainant, has attempted to explain the absence by referring to the COVID-19 pandemic; however, the Roznama reflects that even after excluding the pandemic period, no effective steps were taken by the complainant to prosecute the matter. In these circumstances, I am of the considered opinion that the order passed by the Trial Court is correct, legal, and proper, and no irregularity

or impropriety can be attributed to the Trial Court in dismissing the complaint for default.

13] The record clearly demonstrate that the complainant failed to remain present before the Trial Court on multiple occasions and did not take necessary steps to prosecute the matter. Despite the Court having granted sufficient opportunities over a considerable period, the complainant showed a lack of diligence and interest in proceeding with the complaint. In such circumstances, the Trial Court cannot be expected to keep the matter pending indefinitely. The conduct of the complainant, as reflected from the record, warranted an inference of non-prosecution, and therefore, the Trial Court rightly exercised its discretion in dismissing the complaint for default. The dismissal of the complaint for default appears to be justified and in accordance with law. No illegality, impropriety, or irregularity can be attributed to the said order.

14] Though the revision is maintainable as the impugned order is not interlocutory, no case of illegality, impropriety, or perversity is made out warranting interference under revisional jurisdiction. Under such circumstances, I answer Point No. 1 in affirmative and Point No. 2 in the negative.

As to Point No. 3

15] The complaint has been dismissed for default, and no satisfactory or sufficient justification has been offered

in the present revision application to explain the complainant's absence before the Trial Court. In such circumstances, the revision application deserves to be dismissed.

ORDER

1. The revision application is dismissed.
2. The record of proceedings be sent back to the Trial Court.
3. In the circumstances, no order as to costs.
4. The revision application is disposed of.

Sd/-

(Dr Sudhiir M Deshpande)
Sessions Judge
Sindhudurg-Oros

All concerned to act upon digitally signed uploaded copy of this order, the printout of which can be verified from the official website of this court. In this regard attention of all concerned is invited to the authority of the Hon'ble High Court of Bombay (Bench at Aurangabad) **Shital Krushna Dhake v. Krushna Dhake**, MANU/MH0285/2018.