

ORDER BELOW EXH. 50 IN SCC No.9729/2018

1) The accused has filed the present application to set aside no cross order passed against him on 20/10/2021. It is submitted that, accused is a old age lady and suffering from various disease. So also there is gap of communication in between accused and her Advocate. Accused is ready to proceed with the matter. Therefore, the accused prayed that, no cross order may kindly be set aside.

2) The Ld. Advocate for the complainant has given say on the back leaf of this application and resisted this application on the ground that, sufficient opportunity has already been granted to the accused. There is no satisfactory reason for setting aside no cross order passed against the accused. Hence, the complainant prayed for rejection of this application.

3) Heard both sides at length. Perused the record. It appears that, on 12/11/2018 complainant Santosh Todke filed his evidence affidavit Exh-4. Record further shows that, on 20/10/2021 accused and her Adv were absent, so Court has passed no cross order on 20/10/2021. The accused has filed the present application on 29/01/2022, thus on the face value of the application, it is clear that, the application is filed approx three months after the passing of no cross order against the accused. This conduct of accused shows that, he is prolonging the matter. This complaint is filed under section 138 of the Negotiable Instruments Act. Therefore, looking to nature of this case, it would be proper to allow accused as per principle of natural justice to take cross examination of witness in order to decide this case on merit. No doubt, complainant has suffered inconvenience due to delay in taking cross examination of witness by the accused. However

same can be cured by awarding proper cost. With this view, I pass following order.

ORDER

- i) Application is allowed.
- ii) No cross order dtd.20/10/2021 passed at Exh-4 against accused is hereby set aside subject to costs of Rs.1000/-(Rupees one thousand only) payable to complainant.
- iii) Further adjournment will not be granted for taking cross examination of witness.
- iv) If accused failed to pay the costs to the complainant on or before next date, the no cross order dtd. 20/10/2021 automatically be restored and no order in that regard will be passed separately.

Place : Aurangabad
Date : 15/03/2022

(S.M.Qadri)
09th Judicial Magistrate First Class,
Aurangabad