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Present: Mr.Ashok Kaushik for the petitioner.
Mr.R.N.Sharma for the respondent.

+Crl. L.P. No.50/2007 & Crl. M. No.3467/2007

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This is the criminal leave petition filed under Section 378 (4) Cr.P.C. seeking leave of the court to prefer appeal against the impugned order dated 3.3.2006 where the complaint of the complainant-appellant filed under Section 138 of the Negotiable Instruments Act, was dismissed in default. Leave granted.

Crl. A. No. ¹⁴⁰...../2008(to be numbered)

It is urged by learned counsel for the appellant that earlier his complaint case was pending in Tis Hazari Courts but subsequently transferred to Rohini Courts and that the appellant was given an impression by the reader of the court that the appellant would receive court notice from the Rohini Courts.

It is also urged that during those days lawyers were abstaining from work and for that reason also counsel was not able to keep track of the case and remained under the impression that the case having been allocated to different Magistrate, fresh notice would be sent by that court and because of this bona fide impression, neither the appellant nor his counsel was aware about

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the date of hearing and for these reasons, did not appear on 3.3.2006 and the complaint resulted in dismissal for default.

Learned counsel for the respondent-accused contested this appeal. He urged that the appellant-complainant knew that no amount was due from the respondent, therefore, he did not pursue his complaint. He also urged that the appellant was not diligent in prosecuting his complaint and due to lapses on his part the complaint was dismissed in default and, therefore, he should not take advantage of his own wrongs and appeal should be dismissed on this ground alone.

I Have heard learned counsel for the appellant and that of the respondent. The complaint case stood transferred from Tis Hazari Courts to Rohini Courts. In ordinary course of nature appellant should have received court notice from the transferee court. Even otherwise, perusal of the impugned order does not speak as to what time the complaint was dismissed in default. Ordinarily complaint cases should not be dismissed pre-lunch session as it adversely affects the right of the parties and more particularly many a times people have to come from far flung places and, therefore, on first call the dismissal of the complaint in default should be avoided.

When aggrieved parties puts the law into motion, his case should not go in default but should be adjudicated in accordance with law.

True, there may be some lapses on the part of the appellant in not prosecuting his case diligently but the very fact that the case stood transferred from one District to another District, the appellant must be expecting court notice from the transferee court but that would not mean he should sleep over his matter he is equally under legal obligation to keep track of his case.

Yet in the interest of justice and in view of the fact that no court notice was sent to him, his case should not go in default but should be decided on merits. However, since some lapses are also attributed to the appellant, therefore, he must be burdened with costs so as to make him feel about his legal duties as well.

Consequently, the appeal is allowed, resulting in restoration of the complainant to its original number but the appellant is burdened with costs of Rs.2,000/- to be deposited with Delhi High Court Legal Services Committee within one week.

Parties are directed to appear before the Metropolitan Magistrate on 5th March, 2008.

H.R. MALHOTRA, J.

FEBRUARY 14, 2008/ps