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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 315/2012

FIITJEE FRANCHISE NETWORK LTD. Petitioner
Through: Mr. Suhail Malik, Adv.
versus

NEERAJ JAISWAL Respondent
Through: Mr. V.K. Srivastava, Adv.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

% **ORDER**
05.10.2012

Heard.

Leave to appeal is granted to the petitioner. Registry to register this petition as an appeal.

Crl. A. 1174/2012 (To be numbered)

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 against the respondent before the Metropolitan Magistrate. After recording pre-summoning evidence, Metropolitan Magistrate summoned the respondent.

Matter was at the stage of evidence when, on account of non appearance of appellant, it was dismissed in default vide order dated 22nd

May, 2012 which resulted in acquittal of respondent. It was further observed that the complaint was not properly prosecuted by the complainant (appellant).

It appears that on 30th September, 2011 complainant (appellant) was granted opportunity to lead evidence, subject to cost of ₹2,000/- to be deposited with Delhi Legal Services Authority and the matter was adjourned to 13th February, 2012. However, matter was not taken up on the date fixed, that is, 13th February, 2012. Instead, it was taken up on 13th March, 2012 when no one appeared on behalf of the appellant. No court notice was issued to the appellant on 13th March, 2012 notifying the next date of hearing as 22nd May, 2012. It appears that the counsel was aware of the listing of matter. However, on 13th March, 2012 he did not appear in time. By the time he reached Court matter had already been adjourned to 22nd May, 2012.

Learned counsel for the appellant contends that due to inadvertence he noted the next date of hearing as 24th May, 2012 instead of 22nd May, 2012, thus, appellant remained unrepresented on 13th March, 2012, resulting in dismissal of complaint.

The plea taken by the appellant does not appear to be a improbable

plea. It appears to be a possible plea. First of all, there is likelihood of confusion since the matter was not taken up on 13th February, 2012, that is, the date fixed in the matter on 30th September, 2011. Secondly, on 13th March, 2012 matter was not adjourned in the presence of complainant's counsel. In this scenario, there is every possibility of appellant's counsel noting down a wrong date of hearing.

For the foregoing reasons, impugned order dated 22nd May, 2012 is set aside and the complaint is restored at its original number, subject to, however, cost of ₹20,000/- (Rupees Twenty Thousand Only). Out of the cost so imposed ₹10,000/- be deposited with Delhi Legal Services Authority within two weeks and remaining ₹10,000/- shall be paid to respondent within two weeks. Cost, imposed upon by the Trial Court, shall also be deposited during this period.

Parties shall appear before the Trial Court on 1st November, 2012.

Appeal is disposed of in the above terms.


A.K. PATHAK, J.

OCTOBER 05, 2012

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- 8/M.A. 18956/12 for extending time
for depositing cost