

\$-

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

DECIDED ON : 29th MAY, 2013

+

CRL.A.665/2013

SHALIMAR PAINTS

..... Appellant

Through : Mr. S.K. Menta, Proxy Counsel for
Mr.Sanjeev Sagar, Advocate.

versus

BALAJI PAINTS & HARDWARE

..... Respondent

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Open Court)

1. Present appeal has been preferred by the appellant against order dated 12.05.2011 of learned Metropolitan Magistrate in complaint case No.1935/2011 whereby the proceedings under Section 138 Negotiable Instruments Act instituted against the respondent were dismissed for non-prosecution.

2. Notice of the leave petition was served to the respondent by way of publication. However, none appeared on behalf of the respondent.

Vide order dated 17.05.2013, the appellant was granted leave to appeal. I have heard the learned counsel for the appellant and have examined the record. It reveals that in the proceedings under Section 138 Negotiable Instruments Act process was issued to the respondent for appearance after the summoning order. However, the respondent could not be served. On 12.05.2011, none appeared on behalf of the complainant and the complaint was dismissed in default and non prosecution and the respondent was acquitted.

3. The appellant has given cogent reasons for unintentional absence on 12.05.2011. It is supported by an affidavit of the authorized signatory and attorney of the appellant company- Rajender Kumar. No prejudice will be caused to the respondent if the petition is ordered to be restored as he was not served with the process. In the interest of justice and to enable the appellant to get his complaint case decided on merits, the appeal is allowed and the order dated 12.05.2011 is set aside. The complaint case is restored in its original number. The appellant shall deposit cost of ₹ 500/- already imposed for non-compliance of the directions with the Trial Court. He shall also deposit ₹ 2,000/- as costs with the Trial Court. The appellant shall appear before the Trial Court on

5th June, 2013. The Trial Court shall issue necessary process to the respondent for appearance and the case will be decided on merits.

4. The appeal stands disposed of in the above terms.

(S.P.GARG)
JUDGE

MAY 29, 2013

tr