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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-151-2015
Date of Decision : October 20th, 2015

M/s S.G.Metal Udyog

.... Appellant

Versus

M/s GRV Technique and Others

.... Respondents.

CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.

Present Mr. Gaurav Singla, Advocate,
for the appellant.

SHEKHER DHAWAN, J.

Present appeal is directed against the order dated 12.1.2015 passed by Judicial Magistrate Ist Class, Faridabad whereby complaint under Section 138 of the Negotiable Instruments Act, 1881 [for short, 'the Act'] read with Section 420 IPC was dismissed on account of non-appearance of the complainant or their counsel.

Learned counsel for the appellant submitted that the complainant-appellant had filed a complaint No.1360 dated 31.5.2013 under Section 138 of the Act and Section 420 IPC on account of dishonour of cheque No.740278 dated 13.2.2013 for a sum of Rs. 61,770/- in favour of the present appellant with the assurance that the same would be encashed on presentation. The same was dishonoured on 22.4.2013. Complaint under Section 138 of the Act was filed and respondent No.3 was

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ordered to be summoned by the trial Court. On the date fixed, i.e., 12.1.2015, the complaint was dismissed on account of non-appearance of the complainant before the trial Court as the representative of the complainant was not in a position to attend the court hearing because of noting down of wrong date, otherwise, the complainant was pursuing the complaint regularly.

Learned Counsel for the appellant further submitted that the impugned order passed by the trial Court is against the principles of natural justice as the complainant and their counsel could not attend the court proceedings on the date fixed i.e. 12.1.2015 due to noting down of wrong date of hearing. He has prayed that the complaint be restored to its original number.

Having considered the fact that the complaint was filed by the complainant on 31.5.2013 and thereafter the appellant-complainant was continuously pursuing the matter, there was no reason or motive for the complainant not to put in appearance in the court on the date fixed except for the grounds taken in this appeal. A perusal of the record shows that the appellant-complainant has been continuously pursuing their complaint before the trial Court. In such like cases of single default, the complaint should not be dismissed, rather notice should have been issued to the complainant instead of dismissing the complaint. Such a view was taken by this Court in **Purushotam Mantri Vs. Vinod Tandon alias Hari Nath Tandon, 2009 (1) R.C.R. [Criminal] 442.**

In view of the above, the order dated 12.1.2015 is set-aside and the complaint is ordered to be restored to its original number. The trial

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Court is directed to proceed further in the matter, in accordance with law.

Trial Court records be sent back immediately.

(SHEKHER DHAWAN)
JUDGE

October 20th, 2015
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