

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**Crl. Appeal No. AS-174 of 2015
Date of decision : 19.11.2015**

M/s Sachdeva Metal & Ferro Alloys (P) Ltd.

..... Appellant

versus

M/s Krishna Engg. Works Ltd. & Ors.

... Respondents

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

**Argued by:- Ms. Rishma Verma, Advocate
for appellant.**

None for respondents.

ANITA CHAUDHRY, J.

Crl. Misc. No. 5652 of 2015

There is a delay of 185 days in filing the appeal.

For the reasons mentioned in the application, same is allowed and delay is condoned subject to the petitioners depositing Rs.2500/- as costs with the Legal Services Authority of the District concerned.

Main case

Heard.

Leave granted. Registry has assigned the number to the same.

In this appeal, challenge has been laid to the order dated 30.05.2014 whereby the complaint filed by the appellant under Section 138 of Negotiable Instruments Act against respondents No.1 to 4, has been dismissed for non-appearance.

Notice of the appeal was given, but none has appeared on behalf of contesting respondents No.1 to 4 despite service through their person.

Learned counsel for the appellant contends that the absence of the complainant was not intentional as he was busy in attending his ailing sister. He further contends that the complainant had been appearing on each and every date of hearing and it was a single default that too on account of exigencies beyond his control.

Lower Court record perused. It reveals that on the date when the case was dismissed, it was fixed for complainant evidence. In the past, the complainant had not appeared on two days, but applications for exemption were also filed by one or the other accused from time to time. A very hyper-technical and pedantic approach had been adopted by the Court below by dismissing the complaint. The complainant was pursuing his remedies. He has given an explanation. There was no reason why the complainant would stop pursuing his case. It is a complaint involving dishonour of cheque. It is always in the interest of justice that the case should be adjudicated on merits. In **Mohd. Azeem Vs. A. Venkatesh & Anr., 2002(7) SCC 726**, the Hon'ble Apex Court had held that the complaint ought not to have been dismissed by the Court.

The instant appeal is allowed and the order dated 30.05.2014 passed by the learned Magistrate dismissing the complaint of the appellant in default, is set aside subject to the

condition that there shall be no further default on the part of the complainant. The matter is remitted back to the trial court with a direction to restore the complaint to its original number and then to further proceed with the case from the stage, where it was dismissed, on production of receipt regarding depositing of costs. The complainant, through its counsel, is directed to appear in the trial Court on 21.12.2015.

November 19, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE