

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-191 of 2015 (O&M)
Date of decision: December 14, 2015

M/s Foutainhead Motels Pvt. Ltd.

...Appellant

Versus

M/s Hospitality Plus and another

...Respondents

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.N.S.Panwar, Advocate
for the appellant.

Mr.Sandeep Chhabra, Advocate
for the respondents.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the order dated 08.05.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon, whereby the complaint filed by the appellant was dismissed in default for want of prosecution.

I have heard learned counsel for the parties and have gone through the record.

From the record, I find that on 08.05.2014 when the case was fixed for serving notice under Section 138 of the Negotiable Instruments Act upon the accused, none appeared on behalf of the complainant and the Court by stating that it seems that present complainant is not interested for pursuing the present complaint, dismissed the complaint for want of prosecution.

The Hon'ble Supreme Court in ***S.Anand vs. Vasumathi Chandrasekar, 2008(2) CCC 025 (SC)***, has held that if the complaint is at the stage of defence evidence, it cannot be dismissed for non appearance of complainant. If complainant does not cross-examine defence witness, then complainant would do so at his peril but it cannot be said that presence of complainant was absolutely necessary.

In view of the law cited above, as the complaint case was at the stage of serving notice to the accused under Section 138 of the Negotiable Instruments Act, therefore, the Court should not have dismissed the complaint as the presence of complainant was not necessary and notice upon the accused could have been served.

Therefore, the order dated 08.05.2014 passed by learned JMIC, Gurgaon, is set aside. Finding merit in the appeal, the same is allowed.

The matter is remanded back to the trial Court. The parties are directed to appear before the trial Court on 22.01.2016. Learned trial Court/successor Court shall proceed with the complaint as per law.

December 14, 2015
Vgulati

(INDERJIT SINGH)
JUDGE