

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl. Appeal No.AS-79 of 2015 (O&M)

Date of decision: August 27, 2015

M/s Clear Ion Experts Pvt. Ltd.

...Appellant

Versus

M/s Fair Deal Marketing

...Respondent

CORAM: HON'BLE MR. JUSTICE INDERJIT SINGH

Present: Mr.Sandeep Goyal , Advocate
for the appellant.

Mr.Bir Davinder Singh, Advocate
for the respondent.

INDERJIT SINGH, J.

The present appeal has been filed by the appellant against the order dated 13.03.2014 passed by learned Judicial Magistrate Ist Class, Bilaspur, whereby the complaint filed by the appellant was dismissed in default and accused-respondent was acquitted.

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

From the record, I find that M/s Clear Ion Experts Pvt. Ltd. complainant filed the complaint against M/s Fair Deal Marketing under Section 138 of the Negotiable Act read with Section 420 IPC on the ground that the complainant had supplied the accused 500 LPH capacity RO plant and to discharge its liability, the accused issued

cheque No.059143 dated 10.04.2013 for ₹90,000/-, which was presented to the Bank but was received back with the remarks 'insufficient funds'. Legal notice was served upon the accused.

The order dated 12.11.2013 passed by learned JMIC, Faridabad, has been reproduced in the grounds of appeal, vide which notice against the accused was issued for 06.03.2014 through registered cover on filing of RC etc. As per this order, the complainant with his counsel was present. On 06.03.2014, neither the complainant nor his counsel appeared and the complaint was dismissed in default.

From the record, I find that the absence of the complainant was on 06.03.2014. The presence of the complainant was not required for any substantial proceedings. Only notice was issued to the accused for that day. The Court has dismissed the complaint for want of prosecution. There was no such conduct of the complainant earlier to this date showing that he is not interested in prosecuting the complaint. It is settled law that rights of the parties should be determined on merit as far as possible and the Court should not go into the technicalities of law.

As already discussed, the presence of the complainant was not necessary, therefore, the Court should not have dismissed the complaint. Rather, the complaint should have been proceeded further. The order dated 06.03.2014 on the basis of absence of the complainant on one date only, who is pursuing the complaint since long, is not proper.

Therefore, the order dated 06.03.2014 passed by learned JMIC, Faridabad, 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 28.09.2015. Learned trial Court/successor Court shall proceed with the complaint as per law.

August 27, 2015
Vgulati

(INDERJIT SINGH)
JUDGE