

208-2

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

CRM-A-1001-MA of 2011 (O&M)

Date of decision: February 02, 2015

Bata India Limited

.....Applicant

Versus

Sunil Chadha

.....Respondent

CORAM: HON'BLE MRS. JUSTICE SABINA

Present: Mr. Puneet Gupta, Advocate
for the applicant.

Mr. Amit Prashar, Advocate
for the respondent.

SABINA, J

Applicant had filed a complaint against respondent under section 138 of the Negotiable Instruments Act, 1881 qua dishonour of cheques in question. Applicant led his preliminary evidence and respondent was summoned to face the trial. However, on 02.02.2011, none had appeared on behalf of the complainant and following order was passed:

“Today, the case was fixed for evidence of complainant. Case called several times since morning as well as in the afternoon Sessions but neither the complainant nor anyone on his behalf has come present. It is already 2:35 PM. Further wait is not justified for the presence of complainant or anyone on his behalf. It seems that complainant is not interested in pursuing the present complaint. So, in these circumstances, present complaint is hereby dismissed in default. Accused is acquitted. Bail bonds stand

canceled and surety bonds discharged. File be consigned to the record room after due compliance.”

Learned counsel for the applicant has submitted that complaint be restored to its original number. Applicant had been regularly appearing before the trial Court and on 02.02.2011, absence of the applicant was not intentional, but due to the fact that the counsel for the applicant had noted down a wrong date. In support of his arguments, learned counsel for the applicant has placed reliance on **Om Parkash versus M/s Golden Forest India Ltd. and others**, 2008(4) R.C.R. (Criminal) 445 and **Parle Biscuits (P) Ltd. Versus M/s Sandeep Marketing Company and another**, 2011(4) R.C.R. (Criminal) 687.

Learned counsel for the respondent, on the other hand has opposed the application and has submitted that respondent had appeared before the trial Court on the date fixed. The case was listed for evidence of the applicant. In the absence of the applicant, the trial Court was left with no other option, but to dismiss the complaint in-default.

On 02.02.2011, complaint was listed for evidence of the complainant. However, none had appeared on behalf of the complainant, whereas respondent appeared alongwith his counsel. In these circumstances, learned trial Court was left with no other option, but to dismiss the complaint for want of prosecution. The plea taken by the applicant that a wrong date had been noted, fails to inspire confidence as the

accused-respondent had appeared before the trial Court on the date fixed. On the date when the case was listed before the trial court, presence of the complainant was very necessary as evidence had to be led on behalf of the complainant. I have gone through the judgments relied upon by the learned counsel for the petitioner. However, the same fail to advance the case of the applicant, as they are based on different facts.

Hence, no ground is made out to grant leave to file an appeal. Accordingly, this application is dismissed.

**(SABINA)
JUDGE**

February 02, 2015
m.singh