

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

**Crl. Appeal No. AS-106 of 2015
Date of decision : 24.09.2015**

Daksh Enterprise

..... Appellant

versus

Gaurav Sharma

... Respondent

CORAM:- HON'BLE MS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Gurinder Pal Singh, Advocate
for appellant.**

ANITA CHAUDHRY, J.

Cost imposed vide order 24.03.2015 has been deposited. Receipt has been placed on record.

Heard.

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

In this appeal, challenge has been laid to the order dated 16.08.2013 whereby the complaint filed by the appellant under Section 138 of Negotiable Instruments Act has been dismissed for non-appearance.

Learned counsel for the appellant contends that the absence of the complainant was not intentional. 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 wrong noting of date. According to learned counsel, the case was fixed for procuring the presence of the accused and

presence of the petitioner was not necessary. He further pointed out that earlier the complainant approached the Sessions Court by filing a revision, but it was withdrawn and the instant appeal was filed.

Lower Court record perused. It reveals that on the date when the case was dismissed, it was fixed for presence of accused. The perusal of record also shows that the complainant had been regularly appearing before the Court on each date of hearing, except on 16.08.2013, when the complaint was dismissed for want of prosecution. A very hyper-technical and pedantic approach had been adopted by the Court below by dismissing the complaint only for a single default. The complainant was diligently 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 on account of single default on the part of the complainant. The order passed by the court below seems to be harsh, especially when the case was only fixed for presence of accused.

The instant appeal is allowed and the order dated 16.08.2013 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. The complainant, through its counsel, is directed to appear in the trial Court on 05.10.2015.

September 24, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE