

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

**CRM-A-1755-MA of 2014
Date of Decision:20.07.2015**

Ant Ram ... Appellant

Versus

State of Haryana and another ... Respondents

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Ms. Savita Rana, Advocate
for the appellant.

Mr. Ripu Daman, AAG, Haryana.

RAJ MOHAN SINGH, J. (Oral)

Applicant-appellant has assailed order dated 16.09.2014, vide which complaint under Section 138 of Negotiable Instruments Act was dismissed for non-prosecution. Resultantly, accused-respondent was exonerated of the notice of accusation under Section 138 of Negotiable Instruments Act and his bail bonds/surety bonds were discharged. Learned counsel for the applicant-appellant contends that it was a solitary instance in not appearing before the trial Court, that too on account of bona fide mistake in noting wrong date, otherwise complainant was appearing regularly before the trial Court and case had reached up to the stage of complainant evidence. The amount involved in the case is 8 lacs. Applicant-appellant would not have intentionally allowed complaint to be dismissed for non-prosecution as his valuable rights were involved. There is every possibility of foreclosing the rights of the complainant, in case

further remedies are found to be barred by limitation

The default occurred on the part of applicant-appellant due to wrong mentioning of date. The default is attributable to the office of Advocate. The lapse on the part of appellant cannot be treated to be deliberate but was inadvertent error.

On notice, Mr. Rakesh Gupta, Advocate appeared on behalf of respondent No.2 and has tried to corroborate the reasoning given in the impugned order, but factum of wrong recording of date has not been rebutted by reference to any evidence.

At this stage, it cannot be presumed that after filing and pursuing the complaint on number of dates, appellant would commit any mistake in not appearing on the date fixed intentionally. Since default is singular in nature, therefore, it would be too harsh on the applicant-appellant to nonsuit him merely for his non-appearance on one date.

Resultantly, this Court is of the opinion that impugned order is liable to be set aside. This petition is allowed subject to payment of cost of Rs.3000/- to be paid to respondent. Parties are directed to appear before trial Court on 28.07.2015.

Disposed of.

July 20, 2015
prince

(RAJ MOHAN SINGH)
JUDGE