

IN THE PUNJAB & HARYANA HIGH COURT AT CHANDIGARH

CRM-A-613-MA-2014(O&M)

Date of decision : 02.02.2015

M/s Shree Ram Sharnam Metals

... Appellant

Versus

M/s S.M.Fabricator

... Respondent

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr.Bharat Bhushan Sharma, Advocate
for the appellant.

REKHA MITTAL, J.

The present appeal has been directed against the order dated 16.05.2013 passed by the Judicial Magistrate Ist Class, Faridabad whereby the complaint filed by the appellant was ordered to be dismissed.

Counsel for the appellant contends that a serious prejudice would be caused to the appellant in case the impugned order is not set aside and the appellant is not provided with an opportunity to seek adjudication of dispute on the basis of its merits. It is further argued that the appellant should not be allowed to suffer for lapse on the part of his counsel who failed to comply with orders of the Court to file copy of the complaint for service of the accused.

I have heard counsel for the appellant and perused the records.

Apart from the fact that appeal is barred by limitation, I do not find any reason to interfere in the impugned order. A relevant extract from order dated 16.05.2013 passed by the Judicial Magistrate Ist Class,

Faridabad reads as follows:-

“Process not issued as copy of complaint not filed by the complainant. Perusal of the file shows that copy of complaint has not been filed by the complainant since 8.5.2012 and thereafter, several opportunities have been granted to the complainant for filing of copy of complaint and today, is the last opportunity for filing of copy of complaint, but copy of complaint not filed by the complainant. Therefore, I am of the opinion that the complainant is not interested in pursuing the present complaint any more. Hence, the complaint in hand stands dismissed for want of copy of complaint, to be attached with notice to accused. File be consigned to record room, after due compliance.”

The Court kept the proceedings alive for a period of one complete year during which the case was adjourned on a number of occasions giving repeated opportunities to the complainant and his counsel to file copy of the complaint for issuance of process and securing presence of the accused.

Counsel for the appellant is fair enough to concede that w.e.f. 08.05.2012 till 16.05.2013, the date on which the impugned order was passed, the case was adjourned several times to enable the complainant to file duplicate copy of the complaint for issuance of process to secure presence of the accused. Perusal of the impugned order would reveal that on the date previous to 16.05.2013, last opportunity was provided for filing copy of the complaint but neither the complainant nor his counsel bothered to comply with the directions of the Court. I am well conscious that it is expected from the Court that every endeavour is made to decide the rights

of the parties after giving them an opportunity to be heard on merits. However, no one can be permitted to take the court proceedings for a ride or abuse and misuse process of law. As the appellant was granted several opportunities including last opportunity to file copy of the complaint but he failed to comply with directions issued by the Court without any justification, I do not find any merit in the contentions of the appellant that the impugned order may be set aside and the criminal proceedings be restored on the Board of the trial Court with an opportunity to the appellant to comply with the order passed by the trial Magistrate.

Dismissed.

(REKHA MITTAL)
JUDGE

February 02, 2015.

DK