

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

**Crl. Appeal No. AS-189 of 2015
Date of decision : 11.12.2015**

M/s Mohun Marketing & Distributors & Anr.

... Appellants

versus

Madhav & Associates & Anr.

... Respondents

CORAM:- HON'BLE MRS. JUSTICE ANITA CHAUDHRY

**Argued by:- Mr. Sanjay Joshi, Advocate
for appellants.**

ANITA CHAUDHRY, J.

Notice issued to respondent No.2 has been received back served through his father. None has appeared on behalf of respondents. Complaint was filed against respondent No.1 Madhav & Associates and respondent No.2 was the partner.

Heard.

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

In this appeal, challenge has been laid to the order dated 11.07.2014 passed by the Presiding Officer, Evening Court, whereby the complaint filed by appellant No.1 through its proprietor i.e. appellant No.2 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 submits that the case was missed by the counsel and the appellant should not

be made to suffer. He further submits that the case was fixed for procuring the presence of the accused and the presence of the complainant was not necessary. According to him, the complainant had been appearing on each and every date of hearing and it was a single default.

Record was summoned and perused.

The complaint was filed on 25.10.2012 and the accused was ordered to be summoned for 13.02.2013. For almost two and a half year the complaint remained pending for procuring the presence of the accused through warrants of arrest. The record reveals that the complainant had been appearing on each and every date of hearing. On the date when the case was dismissed, it was fixed for presence of accused and warrants of arrest had been issued. The presence of the complainant was not necessary. 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. 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 11.07.2014 passed by the Presiding Officer, Evening Court, Panchkula dismissing the complaint of the appellants 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 Addl. Chief Judicial Magistrate/CJM, Panchkula (Evening 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 on 21.12.2015.

December 11, 2015
Jiten

(ANITA CHAUDHRY)
JUDGE