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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 69/2014

STATE BANK OF INDIA

..... Petitioner

Through: Mr. Mahabir Parshad, Advocate.

versus

JASMIT SINGH

..... Respondent

Through: Mr. Saurabh Verma, Mr. Ankit Batra
& Mr. Shiv Chopra, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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11.03.2015

1. I have heard learned counsel for the parties.
2. The present leave petition has been preferred to seek leave to appeal against the impugned order dated 30.11.2013 passed by the learned MM, Dwarka for the dismissal of the complaint for non-prosecution. The petitioner has preferred a complaint under Section 138 of the Negotiable Instruments Act, 1881 (NI Act).
3. For the reasons stated in the leave application, the same is allowed and leave is granted to appeal against the impugned order.

Crl.A. No. 318 /2015 (to be numbered and registered)

4. The appeal be numbered and registered.

5. I have heard learned counsel for the parties and perused the record.
6. By the impugned order dated 30.11.2013, the learned MM has dismissed the appellant's complaint under Section 138 of the NI Act. A perusal of the impugned order shows that proxy counsel of the complainant was present when the matter was so dismissed. The reason for the dismissal is stated to be non-payment of Costs of Rs.1,000/-; the absence of the main counsel; the non-appearance on behalf of the complainant on last four dates of hearing, and; the grant of last & final opportunity for payment of Costs.
7. The submission of learned counsel for the appellant is that the appellant had noted the date in his diary as 30.11.2013. Thus, he was not aware of the four previous dates when the matter was listed before the learned Magistrate. He was also not aware that Costs of Rs.1,000/- had to be paid on the said date as a last opportunity. It is for this reason that when the case was taken up on 30.11.2013, the counsel was not present but his assisting counsel was present and costs could not be paid.
8. In my view, the appellant has disclosed sufficient cause for non-payment and non-appearance of counsel on the earlier four dates and on 30.11.2013. Considering the fact that the proxy counsel had appeared, the learned MM could have granted one more opportunity for payment of Costs and for further proceedings. Learned counsel for the appellant has placed on record the photocopy of his case diary, which shows that when the matter was listed on 22.10.2013, the next date in the diary was noted as 30.11.2013.
9. Learned counsel for the appellant submits that he shall pay the costs already imposed by the Trial Court as well as the costs that this Court may

reasonably impose on account of inconvenience suffered by the respondent.

10. Accordingly, the present appeal is allowed, subject to payment of Costs already imposed by the Trial Court and further Costs of Rs.3,000/- to the respondent accused. The impugned order is set aside and the complaint case is restored. The entire costs shall be paid by the appellant to the respondent before the Trial Court on 07.04.2015, when the case will be listed.

11. The appeal stands disposed of.



VIPIN SANGHI, J

MARCH 11, 2015
B.S. Rohella