

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 04, February, 2015

+ CRL.A. 1231/2013

ANIL DHYANI

..... Appellant

Through: Mr Vikas Sharma and Mr Karan
Sachdeva, Advs.

Versus

RAJESH JAJLI

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE SUNITA GUPTA

J U D G M E N T

: SUNITA GUPTA, J.

1. Challenge in this appeal is to the order dated 14.12.2012 vide which the Complaint Case No.1534/1/10 under Section 138 of Negotiable Instrument Act (NI Act) was dismissed by Ld. Metropolitan Magistrate.
2. Notice of appeal was served upon the respondent – Rajesh Jajli but despite service he has failed to appear. Arguments heard on behalf of appellant/complainant.
3. It is the case of the appellant /complainant that the complainant agreed to purchase a plot of land in Kalaghati from Respondent and paid a sum of Rs.2 lac as advance. However, later on it was revealed that the respondent was not the owner of the plot and had no right to sell the same. The respondent in discharge of legal liability issued a cheque of Rs.2 lac dated 14.09.2008 drawn on Oriental Bank of Commerce which on presentation was dishonoured with the remarks “*insufficient funds*”. A legal notice dated 27.09.2008 was served upon him, but he failed to make payment as such complaint was filed.
4. The Ld. Trial Court took cognizance of the offence and summoned the respondent. The respondent was not appearing as such bailable warrants were

issued against him. On 14.12.2012, the complainant/appellant, who is an advocate, could not appear before the Trial Court as he was suffering from fever, however, he instructed his junior colleague advocate to appear on his behalf. However, he too did not appear with the result that Ld. Metropolitan Magistrate dismissed the complaint in default. Inadvertently, the counsel for the appellant filed a revision petition which was dismissed as withdrawn.

5. It was submitted that the appellant could not appear in the Court due to the circumstances as mentioned therein, therefore, the impugned order be set aside and the complaint be restored to its original position. An affidavit in support of appeal has been filed.

6. Keeping in view the fact that the complaint was at its threshold and was dismissed due to non-appearance of the complainant which is attributed to the fact that he was suffering from fever and despite instructions to the junior colleague advocate, he also failed to appear, sufficient cause has been shown by the appellant for his non-appearance on the date when the complaint was dismissed in default.

7. Under the circumstances, in the interest of justice, the appeal is allowed. The impugned order dated 14.12.2012 is set aside. The complaint is ordered to be restored to its original number and position.

The appellant is directed to appear before the concerned Chief Metropolitan Magistrate on 18.02.2015 who may keep the complaint either with himself/herself or may assign the same to the competent Court.

Trial Court record be returned back alongwith a copy of this order.

(SUNITA GUPTA)
JUDGE

FEBRUARY 04, 2015/*rd*