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

+ CRL.L.P. 507/2014

NARAIN SINGH

..... Petitioner

Through: Ms. Richa Singh, Advocate

versus

SMT KAMLESH

..... Respondent

Through:

+ CRL.L.P. 509/2014

NARAIN SINGH

..... Petitioner

Through: Ms. Richa Singh, Advocate

versus

RAJ KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

25.03.2015

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Despite pass over, none has appeared for the respondent. No vakalatnama or reply has been filed by the respondent despite opportunity. Considering the fact that the complaint of the petitioner under Section 138

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of the Negotiable Instruments Act is dismissed for non prosecution, leave is granted.

CRL A Nos.388...../2015 &388...../2015

Let the appeals be registered and numbered.

The present appeals are directed against the order dated 03.03.2014, whereby the complaint preferred by the appellant under Section 138 of the Act was dismissed in default under Section 256 Cr PC on account of non appearance of the complainant or the counsel. The order records that it was apparent on the record that the complainant is not diligent in prosecuting his case.

Learned counsel for the petitioner submits that the respondent had assured the complainant that the dispute would be settled by making payment of the outstanding amount in front of a common acquaintance named Rajjo. However, the respondent did not make the settlement. On account of the said assurance, the appellant did not appear on three dates before the learned Magistrate, which led to the passing of the impugned order.

Since there is no contest to these averments on behalf of the respondent, there is no reason not to accept the same. However, in any event, the appellant is obliged to appear before the Court since the complaint was pending. Even if the complainant desired that the complaint be not proceeded with, the complainant should have appeared to apprise the court of the settlement talks and on that ground sought deferment of the case.

Since the complaint has not been adjudicated on merits, this Court is of the opinion that the same should be so adjudicated so as to prevent the

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appellant from suffering irreparable loss and injury and failure of justice. Accordingly, the complaint is restored to its original number subject to the complainant depositing costs of Rs.1,000/- to be paid to the Delhi High Court Legal Services Authority.

The parties shall appear before the learned Magistrate on 27.04.2015.



VIPIN SANGHI, J

MARCH 25, 2015

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