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

+ CRL.L.P. 430/2014

MATA VAISHNO FINSEC (P) LTD Petitioner

Through: Mr. Manish Sharma, Advocate.

versus

RAVINDER SINGH MALIK Respondent

Through: Mr. Pardeep Dahiya, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

15.04.2015

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Crl.M.A. No. 10421/2014

1. I have heard learned counsel and proceed to dispose of this application filed by the petitioner seeking condonation of delay in preferring the leave petition.

2. The leave petition itself has been preferred to assail the order dated 16.01.2014 passed by the learned Metropolitan Magistrate (MM) dismissing the complaint preferred by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (NI Act), in default and for non-appearance and acquitting the respondent accused. The order dated 16.01.2014 passed at 02:30 p.m. records that none appeared for the complainant. The case was listed for framing of notice. The complainant failed to appear despite waiting since morning. The order also records that

the complainant did not appear on the last date. Consequently, the complaint was dismissed in default and for non-prosecution.

3. The explanation furnished by the petitioner for the non-appearance of the counsel on 16.01.2014 is that the grandmother of the counsel had passed away and, therefore, he had to leave town.

4. The application further reveals that learned counsel for the appellant/complainant got knowledge of the dismissal of the case in the second week of February 2014 and he applied & received the certified copy of the impugned order. Thereafter the erstwhile Authorised Representative (AR) of the petitioner company Sh. Sant Lal was sought to be contacted but despite efforts, he could not be contacted. The leave petition was preferred after the present AR Sh. Rajesh Sharma was appointed and board resolution dated 22.05.2014 was passed. The aforesaid had occasioned delay of 77 days in filing the leave petition.

5. The application is opposed by learned counsel for the respondent. He submits that sufficient cause has not been disclosed to seek condonation of delay. He submits that even though the petitioner became aware of the dismissal of the complaint in the second week of February 2014, steps were not taken to file the leave petition within the period of limitation. The petitioner took its own sweet time to appoint fresh AR and prefer the leave petition. The aforesaid cannot afford justification for seeking condonation of delay. In support of his submission, learned counsel for the respondent has placed reliance on two decisions of this Court in *National Small Industries Corporation Limited Vs. Akriti Industries*, Crl.L.P. Nos.280-

281/2012 decided on 25.05.2012; and *Fincap Portfolio Limited Vs. State & Others*, (2013) 198 DLT 366.

6. I have heard learned counsel for the parties and proceed to dispose of the application.

7. The reason for non-appearance of the counsel on the date fixed, i.e. 16.01.2014 is stated to be the demise of grandmother of the counsel on account of which the counsel had to leave town. The counsel was diligent since he enquired about the fate of the case and obtained certified copy of the order in the second week of February 2014, which was well within the period of limitation. His endeavour to contact the then existing AR failed on account of the AR leaving his service with the petitioner company. Judicial notice could be taken of the fact that in respect of corporate entities, it is the designate officer/ AR, who remains in contact with the counsel, who is entrusted with the task of following up the cases. Consequently, the petitioner company may not even have been aware of the factum of the dismissal of the complaint on 16.01.2014. The petitioner company appointed a fresh AR in May 2014 and, consequently, the leave petition has been preferred.

8. In the case of *Akriti Industries* (supra), the Court did not condone the delay of 28 days in filing the leave petition. In that case, summons in the case had been issued way back in 2003-04, and on account of inaction on the part of the complainant, even the pre-summoning evidence had not been led after a lapse of 8-9 years due to the apathetic attitude of the petitioner. It was in these circumstances that this Court took note of the continued lapses

on the part of the petitioner to reject the application seeking condonation of 28 days delay.

9. In *Fincap Portfolio Limited* (supra), there was a delay of 461 days. This Court, after taking note of several other decisions, observed that it is not the length of delay which is material for condonation of delay in filing an appeal but the acceptability of the explanation. There may be cases where a few months delay may not be condoned as an applicant has no reasonable explanation to offer for the same, yet there are cases where the delay of several years has been condoned. The law that each days delay must be explained has ^{been} mellowed down, yet it has to be shown by the applicant that there was neither any gross negligence, nor any inaction, nor want of bona fides.

10. In the light of the facts taken note of hereinabove, in my view, it cannot be said that either there has been gross negligence, or any inaction, or want of bona fides on the part of the petitioner in preferring the leave petition. Even otherwise, the lis must be decided on merits and not on mere technicalities. The inconvenience caused to the respondent can be mitigated by way of costs. Accordingly, the delay is condoned, subject to payment of costs of Rs.10,000/- to the respondent.

11. The application stands disposed of.

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12. Leave granted.

13. Let the appeal be registered and numbered.

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Crl.A. No. 450 /2015 (to be registered and numbered)

14. This appeal is directed against the order dated 16.01.2014 passed by the learned Metropolitan Magistrate-06 (MM) Dwarka, whereby the complaint preferred by the appellant under Section 138 of the NI Act has been dismissed in default and for non-appearance.

15. I have already taken note of the relevant facts in the earlier part of the order while dealing with the application seeking condonation of delay. Accordingly, the present appeal is allowed and the impugned order is set aside for the reasons already taken note of hereinabove.

16. The parties shall appear before the learned MM on 05.05.2015. The appellant shall, however, ensure that there is no lapse in the following up the case in future and no further indulgence should be shown to him by the Trial Court in this regard.



VIPIN SANGHI, J

APRIL 15, 2015
B.S. Rohella