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

+ CRL.L.P. 305/2014 & CRL MA 7033/2014

SURINDER KUMAR ARORA

..... Petitioner

Through: Mr. R.S. Chaggar, Advocate

versus

BALBIR SINGH SOLANKI & ANR.

..... Respondent

Through: Mr. Girish Gaur, Advocate

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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06.05.2015

Arguments heard. Leave granted.

CRL A No.....542...../2015

Let the appeal be registered and numbered.

With the consent of parties, I have heard learned counsels for the parties and proceed to dispose of the appeal. The present appeal is directed against the order dated 12.12.2013 passed by the learned Magistrate, whereby the appellant's complaint under Section 138 of the Negotiable Instruments Act has been disposed of and the respondent/accused has been acquitted. A perusal of the impugned order shows that none appeared for the complainant, and the complainant was also not present when the case was taken up at 12:30 p.m. It also appears that the complainant had not led any

evidence and the previous costs imposed were also not paid. Consequently, the complainant's evidence was closed and since there was no evidence on record in support of the complaint, the accused was acquitted.

The submission of learned counsel for the appellant is that the appellant was suffering from viral fever on the said date and the counsel was busy in another court. The exemption application in respect of the complainant had been prepared and had also been moved. However, the same was not entertained. Counsel submits that the appellant was ready and willing to deposit the costs of Rs.3,000/- earlier imposed on 12.12.2013. However, the same could not be paid since the counsel was not present when the complaint was taken up and disposed of.

Though, a dispute is sought to be raised with regard to the address of the appellant, in my view, the same is not of any relevance. The *lis* between the parties should be adjudicated on merits and not on mere technicalities. In the present case, the trial court record shows that the exemption application was indeed moved on the same day, but by 2:00 p.m. when the complaint had been rejected and the respondent was acquitted. Therefore, it cannot be said that the complainant was not interested in pursuing the complaint. At the same time, there was a lapse on the part of the complainant and his counsel, and the inconvenience caused to the respondent deserves to be compensated.

Accordingly, the appeal is allowed subject to costs of Rs.10,000/- over and above the costs of Rs.3,000/- imposed by the trial court. The said costs shall be paid before the learned Magistrate on the next date.

The complaint stands restored to its original number. The parties shall appear before the learned Magistrate on 25.05.2015. It is made clear

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that no further indulgence shall be sought by the appellant or granted by the trial court.

The appeal stands disposed of.



VIPIN SANGHI, J

MAY 06, 2015

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