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HIGH COURT OF CHHATTISGARH, BILASPUR**Cr.M.P No. 1029 of 2016**

Shashank Jain S/o Rakesh Kumar Jain Aged About 27 Years Partner- Kengs Marketing, Raipur R/o. A:2, Amrapali Society, Pachpedhi Naka, Police Station: Tikrapara, Tahsil & District Raipur, Chhattisgarh.

---- Petitioner**Versus**

1. Anant Sai Civil Cone Pvt. Ltd. Director: Saurabh Mishra, Director: Om Prakash Mishra, Director: Rajkumar Tiwari, Director: Rajkumar Tiwari . Address:mishra Bada, Tatyapara Chowk, Police Station Azad Chowk, District Raipur, Chhattisgarh.

2. Shri Saurabh Mishra Director, Anant Sai Civil Cone Private Limited Address: Mishra Bada, Tatyapara Chowk, Police Station Azad Chowk , District Raipur, Chhattisgarh.

3. Om Prakash Mishra Director , Anant Sai Civil Cone Private Limited. Address: H. No.: 5/788, Shrinagar, Police Station.: Khamtarai, District Raipur, Chhattisgarh.

4. Shri Rajkumar Tiwari Director, Anant Sai Civil Cone Private Limited, Address: H. No.: 118, Brahminpara, Purani Basti, Raipur, Chhattisgarh.

-----Respondents

For Petitioner:
For Respondents:

Shri N. Naha Roy, Advocate.
None.

Single Bench: **Hon'ble Shri P. Sam Koshy, J**
Order On Board

19.9.2016

1. The present Cr.M.P under Section 482 Cr.P.C has been filed setting aside the order dated 13.1.2016 passed by the JMFC, Raipur in Complaint Case No.20820/2014 whereby the complaint case filed by the present Petitioner against the Respondents has been rejected on account of the default on the part of the Petitioner in payment of PF.

2. Brief facts of the case are that the Petitioner/Complainant had lodged a case against the Respondents under the provisions of Section 138 of the Negotiable Instruments Act and on 3.12.2014, the Magistrate ordered for registration of the complaint and also ordered for issuance of summons to the

Respondents upon the Petitioner paying the process fee within a period of 3 days from 3.12.2014. However, from the proceedings, it reflects that from 3.12.2014, in spite of the matter being adjourned on a number of occasions, there was a default on the part of the Petitioner in non-payment of PF for notice to the Respondents and finally, the Court, on 13.1.2016 had dismissed the complaint on account of the default on the part of the Petitioner.

3. It is this order which has been assailed by learned Counsel for the Petitioner.

4. According to the Petitioner, the default on the part of the Petitioner was not deliberate or intentional but was bona fide on account of the there being no proper communication with the Counsel appearing for the Petitioner before the Trial Court. Learned Counsel for the Petitioner submits that the Petitioner in fact, on 13.1.2016 had approached the Court with an intention of paying the PF but before he could do so, the Court below had rejected the Complaint Case. He therefore prays that he may be granted one last opportunity for payment of PF so that the notice may be issued to the Respondents.

5. On bare perusal of the record, it appears that there was a great lapse on the part of the Petitioner for a considerable long period and that the justifications and explanations given by the Petitioner in the present Petition are not at all satisfactory and the submissions made are really hard to believe. This Court, at this juncture, cannot brush aside the fact that the Petitioner had been able to convince the Court at the first instance in making out a case under Section 138 of the Negotiable Instruments Act which has also been registered by the Court below and the Court below had also ordered for issuance of summons. However, because of the default on the part of the Petitioner, the complaint has been rejected and now that the Petitioner has been rendered remedy less for redressal

of his grievance before any other forum, therefore ends of justice would meet in case if the order dated 13.1.2016 is set aside and one last opportunity is granted to the Petitioner for payment of PF and the matter be proceeded and decided on merits.

6. However, while setting aside the impugned order, this Court is inclined to impose cost upon the Petitioner for the lapse on his part and for which he shall deposit an amount of Rs.2,500/- to the State Legal Services Authority and the receipt of which shall also be produced before the Trial Court.

7. Accordingly, the order dated 13.1.2016 passed by the JMFC, Raipur stands set aside and the case is restored to its original number. The Petitioner is directed to enter appearance before the Court of JMFC, Raipur on 4.10.2016 and on which date itself, he shall pay the PF and the Court below shall proceed further with the case from the stage for which the case was fixed i.e. on 13.1.2016.

8. It is made clear that in the event the Petitioner fails in depositing the cost imposed by this Court today or showing the receipt of the same to the Court below or in the event the Petitioner fails to deposit the PF for issuance of summons to the Respondents on the same day i.e. 4.10.2016, then the Court below shall be at liberty to reject the complaint case.

9. With the aforesaid observation, the present Cr.M.P stands allowed.

Sd/-
(P. Sam Koshy)
JUDGE