

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRA-S-1704-SB-2014

Date of decision: 27.04.2016

Mobin

..... Appellant

Versus

Bijender Kumar

..... Respondent

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

1. *Whether Reporters of the local papers may be allowed to see the judgment?*
2. *To be referred to the Reporters?*
3. *Whether the judgment should be reported in the digest?*

PRESENT: Mr. Manish Soni, Advocate for the appellant.

Mr. Vivek Goyal, Advocate for the respondent.

RAMENDRA JAIN, J.

Appellant-Mobin has filed the instant appeal against the judgment dated 28.11.2011 passed by the learned Judicial Magistrate Ist Class, Panchkula, dismissing his complaint under Section 138 of the Negotiable Instruments Act.

2. Learned counsel for the appellant contended that the fact mentioned in the impugned judgment that hearing was given to the appellant on 28.11.2011 is patently wrong and illegal. In fact, learned counsel for the appellant inadvertently had noted down a wrong date i.e. 28.01.2012 instead of 28.11.2011. More so, the trial Court has not

justified that why the appellant was given personal hearing by ignoring his counsel, when he too was present in the Court. Appellant's evidence was closed on the first date in a hurried manner and then judgment was pronounced on the same day by dispensing with the statement of respondent under Section 313 Cr.P.C. Reliance has been placed upon **(i) Indian Bank Association and others Vs. Union of India and others, 2014 (5) SCC 590; (ii) Purshotam Mantri Vs. Vinod Tandon @ Hari Nath Tandon, 2009 (1) R.C.R.(Criminal) 442 and (iii) Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and others, 2015(8) R.C.R. (Criminal) 457.**

3. On the other hand learned counsel for the respondent vehemently opposed the contentions raised by learned counsel for the appellant by submitting that proper opportunities were given to the appellant to adduce his evidence before dismissing his complaint.

4. I have heard learned counsel for the parties and carefully gone through the record and find that injustice is being done with the appellant by dismissing his complaint without affording him even a single opportunity to adduce his evidence. Hence, considering overall facts and circumstances of the case, the instant appeal is allowed. Resultantly, the impugned order dated 28.11.2011 closing the evidence of the appellant on the first date itself before lunch and the judgment of even date dismissing the complaint are hereby set aside. The trial Court is directed to grant at least three effective opportunities to the appellant in a span of three months to adduce his evidence to his satisfaction, subject to payment of ₹ 5000/- as costs, 50% of which shall be paid to learned

counsel for the respondent and the remaining shall be deposited with the District Legal Services Authority, Panchkula. It is, however, made clear that in case, the appellant would fail to adduce his evidence in three opportunities in the above time frame, in that eventuality, he shall have no right to raise any grouse. Similar opportunities shall also be granted to the respondent to conclude his evidence, if any, in defence.

5. Both the parties are directed to appear before the learned trial Court on 12.05.2015.

6. Registry is directed to send the lower Court record back along with a copy of this order positively before 10.05.2016.

April 27, 2016
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(RAMENDRA JAIN)
JUDGE