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

+ CRL.L.P. 177/2014

HAMDARD (WAKAF) LABORATORIES Petitioner
Through Mr. Ravi Sikri, Mr. Sumel Khanna and
Mr. Deeponk Yadav, Advocates

versus

RAKESH ARORA Respondent
Through Mr. Rohit Gandhi, Advocate

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER
% **08.01.2016**

Having heard learned counsel appearing on behalf of the parties, the Court is of the view that there are sufficient grounds for grant of leave to appeal. Accordingly, the criminal leave petition is allowed.

The matter is directed to be registered as a criminal appeal.

CRL.A. _____/2016 (To be numbered)

After hearing learned counsel appearing on behalf of the parties, the present appeal is being disposed of by this order.

The present appellant assails the order dated 12th December, 2013 passed by the Metropolitan Magistrate, Negotiable Instruments Act, (West), Delhi, dismissing the complaint being Criminal Complaint Case No. 2176/1 filed on behalf of the appellant under Section 138 of the NI Act, on account of the circumstance that the appellant was unable to serve the respondent herein despite repeated opportunities.

As is evident from a perusal of the order impugned in the present appeal, the complaint filed on behalf of the appellant had not been heard or adjudicated on merits. In my considered view, an opportunity must be granted to the

complainant to prosecute the complaint before the concerned Magistrate especially in view of the circumstance that the respondent has now appeared before this Court.

The present appeal is consequently allowed.

The impugned order dated 12th December, 2013 is set aside.

The Criminal Complaint Case No. 2176/1 filed under Section 138 of the NI Act titled Hamdarad (Wakaf) Laboratories vs. Rakesh Arora is remanded back to the Court of the concerned Magistrate for adjudication on merits, subject to payment of Rs. 10,000/- as costs to be paid to the respondent within a period of two weeks from today.

List the matter before the concerned Magistrate on 2nd March, 2016 for hearing and adjudication of the complaint case as afore-stated on merits in accordance with law.

SIDDHARTH MRIDUL, J

JANUARY 08, 2016

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