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

DECIDED ON : 25th JANUARY, 2016

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CRL.A.186/2014

M/S.FREIGHT SYSTEMS (INDIA) PVT.LTD. Appellant

Through : Mr.Arvind K.Singh, Advocate.

versus

M/S.TAC EXPRESS PVT.LTD & ORS. Respondents

Through : None.

CORAM:

HON'BLE MR. JUSTICE S.P.GARG

S.P.Garg, J. (Oral)

1. Present appeal has been preferred by the appellant to challenge the correctness of an order dated 03.09.2010 of learned Commercial Civil Judge in CC No.4244/1/2009 by which the complaint case under Section 138 Negotiable Instruments Act filed by him was dismissed for non-prosecution / non-appearance. Notice was given to the respondents. On subsequent dates, none appeared on their (respondents) behalf.

2. I have heard the learned counsel for the appellant and have examined the Trial Court record. On perusal of the Trial Court record, it reveals that complaint case under Section 138 Negotiable Instruments Act was filed by the appellant on 28.05.2007. The respondents were summoned for the commission of offence under Section 138 Negotiable Instruments Act. They could not be served and the process issued to them was received back unexecuted. Subsequently, bailable warrants issued against them were also received back unexecuted. Finally, when none appeared on behalf of the appellant on 03.09.2010, the Trial Court dismissed the complaint case for non-prosecution. Record further reveals that on previous dates i.e. 14.01.2009, 11.12.2009 and 03.09.2010, none had appeared on behalf of the complainant. Since the complainant had not put appearance on various dates, the Trial Court had no alternative but to dismiss the complaint case for non-appearance. On that score, the impugned order can't be faulted.

3. It is also relevant to note that on 03.09.2010, no effective proceedings were to take place in the court. Vide order dated 10.07.2008, representative of the appellant company had put appearance. Bailable warrants were ordered to be issued against the respondents for 03.10.2008. In the meanwhile, the case was transferred from the Court of

Sh.Gautam Manan, learned Metropolitan Magistrate to the Court of Sh.Naresh Kumar Malhotra, Learned Metropolitan Magistrate. It was adjourned for 14.01.2009 for service. In the meanwhile, the case was transferred to the Court of Sh.Jagdish Kumar, leaned Commercial Civil Judge. No notice was ever given to the appellant on transfer of the case. The case was adjourned for 11.12.2009 and fresh bailable warrants were issued. On 11.12.2009, the Presiding Officer was on leave. On 03.09.2010, the case was dismissed for non-appearance. Record reveals that despite issuance of process on various dates, it could not be executed. None had put appearance on behalf of the respondents before the Trial Court. The appellant has given cogent reasons supported by the affidavit in the appeal for absence on these dates. Restoration of the complaint case in its original number would not cause any prejudice as the respondents did not put appearance before the Trial Court. They also remained absent before this Court.

4. In the interest of justice and to enable the appellant to get the case decided on merits, impugned order dated 03.09.2010 is set aside. Complaint case is ordered to be restored in its original number. The Trial Court shall proceed with the case on merits. The appellant shall appear

before the Trial Court on 01.02.2016. The appeal stands disposed of in the above terms.

5. Trial Court record be sent back forthwith with the copy of the order.

(S.P.GARG)
JUDGE

JANUARY 25, 2016 / *tr*