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

DECIDED ON : 29th FEBRUARY, 2016

+ **CRL.A. 874/2013 & CRL.M.A.No.18260/2015**

M/S. FLOW & FAUCETS CO. Appellant

Through : Mr.Dheeraj Malhotra, Advocate.

versus

M/S.B&R HOME SOLUTIONS Respondent

Through : None.

**CORAM:
HON'BLE MR. JUSTICE S.P.GARG**

S.P.Garg, J. (Oral)

1. The instant appeal has been preferred by the appellant to challenge the legality and correctness of an order dated 27.08.2012 of learned Metropolitan Magistrate whereby the complaint case under Section 138 Negotiable Instruments Act instituted by the appellant against the respondent was dismissed for non-prosecution and the respondent was acquitted. The respondent failed to put appearance on adjourned date before this Court.

2. I have heard the learned counsel for the appellant and have examined the file. On perusal of the record, it reveals that the complaint case under Section 138 Negotiable Instruments Act was filed by the appellant against the respondent on 24.10.2009. After taking cognizance vide order dated 06.04.2010 under Section 138 Negotiable Instruments Act, the respondent was summoned. On 16.04.2012, Sh.Sanjay Kumar, Advocate put appearance along with respondent before the Court and furnished the required bail bonds. Vide order dated 03.07.2012, case was adjourned for framing of notice of acquisitions on 27.08.2012. On that day, none appeared on behalf of the appellant / complainant and the Trial Court dismissed the complaint under Section 256 Cr.P.C.

3. The leave petition filed before this Court was allowed vide order dated 11.07.2013. It is relevant to note that the respondent did not file any response to the leave petition despite an opportunity granted.

4. The appellant had prosecuted the complaint case diligently throughout and only on one occasion i.e. 27.08.2012 none appeared on his behalf. In the appeal, it has been specifically mentioned that absence was not intentional and was due to wrong 'entry' about the next date of hearing i.e. 30.08.2012. It is supported by affidavit. There are no sound reasons to disbelieve the appellant particularly when the respondent has

not bothered to contest it. No effective proceedings were to be conducted on the said date requiring the presence of the appellant.

5. In the interest of justice and to enable the appellant to get its case decided on merits, the appeal is allowed. Impugned order dated 27.08.2012 is set aside and Complaint Case No.334/2012 is ordered to be restored in its original number.

6. The parties shall appear before the Trial Court on 21st March, 2016. The Trial Court shall proceed as per law.

7. Pending application also stands disposed of.

(S.P.GARG)
JUDGE

FEBRUARY 29, 2016 / tr