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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 26/2016

BRIJWATI

..... Petitioner

Through: Mr Rajesh Ranjan, Advocate.

versus

STATE (NCT OF DELHI)

..... Respondent

Through: Ms Radhika Kolluru, APP.
Ms Soumya Kumar and Ms Pragya
Srivastava, Advocates for R-2.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

ORDER

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18.05.2016

CRL.M.A. 689/2016 (Condonation of delay)

The present application seeks condonation of delay in filing the accompanying leave petition.

In view of the circumstance that the complaint case itself was dismissed in default and for the reasons stated in the application, which are supported by an affidavit, in my view the applicant has been able to show sufficient case for the delay.

The application is accordingly allowed. The delay in instituting the accompanying leave petition is condoned.

The application is disposed of accordingly.

CRL.L.P. 26/2016

The present leave petition seeks leave to appeal against the impugned judgment and order dated 01.09.2015 whereby Complaint Case No.1627/1 of 2007 instituted by the leave petitioner under Section 138 of the Negotiable Instruments Act, 1881 came to be dismissed by the concerned Magistrate for non-appearance as well as non-prosecution.

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the physical file and no page is missing.

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After hearing counsel for the parties, in my view, since the said complaint case has been dismissed for non-prosecution, sufficient grounds exist for allowing the present application and granting leave to appeal to assail the impugned order.

The leave petition is accordingly allowed and disposed of. The leave petition be registered as an appeal.

CRL.A. No. 489 (To be Numbered)

With the consent of counsel appearing on behalf of the parties, the appeal is heard and disposed of by this order.

A perusal of the order impugned in the present appeal discloses that Complaint Case No.1627/01 of 2007 was dismissed for non-appearance as well as non-prosecution by the concerned Magistrate on account of the circumstance that none appeared on behalf of the complainant (appellant herein).

Mr Rajesh Ranjan, learned counsel appearing on behalf of the appellant states that the non-appearance on behalf of the complainant (appellant) was occasioned by the circumstance that the counsel had inadvertently noted the wrong date of hearing which was also communicated to the complainant.

In view of the foregoing the appellant has been able to make out sufficient cause for his non-appearance as well as that of the appellant. It is further observed that the non-appearance was not wilful or deliberate.

In the present case it is noticed that the complaint case came to be dismissed on account of the non-appearance of the complainant and his counsel as aforesaid and consequently for non-prosecution and has in fact not been adjudicated on the merits. In my opinion, therefore, an opportunity must be granted to the complainant to prosecute the complaint before the Magistrate.

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The appeal is accordingly allowed. The Complaint Case No.1627/01 of 2007 titled Brijwati v. Anil Kumar is restored to the file of the concerned Magistrate subject to payment of Rs.5,000/- as costs to the private respondent.

It is, however, made clear that this is the final opportunity granted to the complainant to prosecute his case diligently. No further opportunity in this behalf shall be granted.

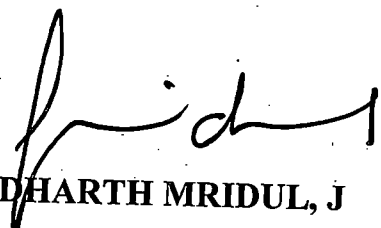
In view of the circumstance that the appellant is a senior citizen the Magistrate is requested to ensure that the complaint case be determined as expeditiously as possible in accordance with law.

List this matter before the concerned magistrate for further proceedings in accordance with law on 30.05.2016.

The appeal is disposed of accordingly.

A copy of this order be sent to the concerned Magistrate for necessary compliance.

MAY 18, 2016
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SIDDHARTH MRIDUL, J