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

+ CRL.L.P. 732/2014

SURYA MANUFACTURING INDIA LIMITED Petitioner
Through: Mr.Sadre Alaw, proxy counsel

versus

M/S ECO TERRIAN PROJECTS
PRIVATE LIMITED & ORS Respondents
Through: Mr.Saurabh Kansal & Ms.Pallavi
S.Kansal, Advocates for R-3 with R-3
in person

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER
21.01.2016

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1. The petitioner is aggrieved by the order dated 18th September, 2014 whereby the Complaint Case No.668/2011/2013 filed by him under Section 138 N.I.Act has been dismissed in default by the learned Metropolitan Magistrate and the accused have been acquitted.
2. Aggrieved by the said order the petitioner filed this leave petition of which notice was issued to the respondents.
3. Notice sent to respondent No.1 was received unserved with the report that name of the respondent No.1 company has been struck off from the Registrar of Companies.
4. Vide order dated 24th March, 2015, name of respondent No.1 was deleted in this petition.

5. Notice to respondent No.2 could not be served. However, respondent No.3 has appeared along with his counsel. It is relevant to mention that both respondent Nos.2 (Mr.Vipin Kumar Jain) and 3 (Mr.Sandeep Kumar Jain) are having common address.

6. Learned counsel for the petitioner submits that the complaint was dismissed in default for the following reasons:-

(i) The counsel for the plaintiff felt seriously ill and despite being on heavy medication including “Steroids”, his health started deteriorating to the extent that he was not even able to move out of his bed. Finally on 22nd April, 2014 the counsel for the plaintiff was admitted to Apollo Hospitals, Chennai where he was diagnosed for various ailments and finally underwent open surgery of his neck on 9th May, 2014. It is further stated that counsel for the complainant is still on medications and is also under continuous diagnosis and observations of the doctors.

(ii) The counsel for the plaintiff due to inadvertence instead of recording 18th September, 2014, incorrectly recorded 19th September, 2014 as the next date.

7. Learned counsel for the respondent No.3 on instructions submits that in view of the reasons explained in the petition for non-appearance of the learned counsel for the petitioner/complainant i.e. long illness of the counsel and wrong noting of the date, the impugned order may be set aside subject to the conditions deemed fit by the Court.

8. In view of the submissions made by learned counsel for the respondent No.3, the order dated 18th September, 2014 dismissing the complaint for non-prosecution is set aside subject to the cost of ₹25,000/-.

9. Parties are directed to appear before the learned Trial Court on 9th February, 2016. The cost shall be paid by the petitioner to the respondents /accused before learned Trial Court on that date.
10. It is made clear that if cost is not paid by the petitioner then leave petition stands dismissed.
11. The petition stands disposed of in above terms.
12. Order *dasti*.

PRATIBHA RANI, J.

JANUARY 21, 2016
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