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

+ CRL.M.C. 4344/2016 and CrI. M.A. No. 18149/2016 (stay)

SUDHIR AGGARWAL

..... Petitioner

Represented by: Mr. Vishal Sharma, Advocate.

versus

GOVT. OF NCT OF DELHI & ANR

..... Respondents

Represented by: Mr. Ashok K. Garg, APP for
the State.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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09.12.2016

1. By the order dated 18th July, 2016, the learned Metropolitan Magistrate closed the opportunity of the petitioner/accused to lead defence evidence in Complaint Case No.6857/2016 titled as 'Naresh Yadav vs. Sudhir Aggarwal' under Section 138 of the Negotiable Instruments Act, 1881 (in short 'NI Act').

2. A perusal of the order sheet of the learned Trial Court would reveal that on 26th May, 2015 the complainant was cross-examined and discharged and thus the complainant's evidence was closed. The matter was listed for statement of the petitioner under Section 281 Cr.P.C. read with Section 313 Cr.P.C. on 18th August, 2015 when an application seeking exemption from appearance was filed on behalf of the petitioner which was allowed. The next date fixed was 8th September, 2015 when his statement was recorded

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and the petitioner preferred to lead the defence evidence. List of defence witnesses was directed to be filed within ten days and the matter fixed for defence evidence on 17th November, 2015. On 17th November, 2015, the matter was adjourned at joint request for 8th December, 2015 on which date an application for summoning the defence witnesses was filed which was allowed and summons were issued to the defence witnesses on filing of the process fee returnable for 16th February, 2016. On 16th February, 2016, the learned PO was on leave however, an application was filed by the petitioner under Section 315 Cr.P.C. copy whereof was supplied to the complainant and the matter was listed for 10th May, 2016 for further proceedings on which date again an application seeking exemption from appearance was filed on behalf of the petitioner on the ground that his father was unwell. Though DW HC Sanjeev was present however, he had to be discharged un-examined as even the main counsel for the petitioner was not present. On 18th July, 2016 DW HC Sanjeev was again present but had to be discharged because despite repeated calls, the petitioner was absent. Hence non-bailable warrants were issued and the matter was listed for final arguments.

3. From a perusal of the record it is evident that since the date the matter was listed for defence evidence, adjournments were sought on behalf of the petitioner on one pretext or the other.

4. Learned counsel for the petitioner contended that the adjournment had to be sought as the father of the petitioner was unwell who later passed away. This Court raised a specific query as to when did the father of the petitioner pass away to which there is no reply by the counsel.

5. Considering the fact that the matter could not be proceeded for more than one year after the matter listed for statement of the petitioner/accused and leading defence evidence, this Court finds no error in the impugned order.

6. Petition and application are dismissed.

MUKTA GUPTA, J.

DECEMBER 09, 2016
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