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

+ CRL.L.P. 147/2016

JASMEET SINGH

..... Petitioner

Through: Mr. D.K. Yati, Advocate.

versus

NARINDER SINGH

..... Respondent

Through: Respondent with his counsel.
(Appearance not given)

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

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28.11.2016

Leave granted.

Crl. Appeal No. 1153 /2016 (to be registered and numbered)

Let the appeal be registered and numbered.

With the consent of the parties, I have heard the submissions and proceed to judgment.

The present appeal is directed against the order dated 23.12.2015, whereby the complaint preferred by the complainant under Section 138 of the Negotiable Instruments Act has been dismissed in default and for non-prosecution. The impugned order records that none has appeared for the complainant despite repeated calls. The learned Magistrate also takes note

of the fact that on the last three dates of hearing, none has appeared for the complainant. Consequently, the complaint was dismissed in default and for non-prosecution.

The submission of learned counsel for the appellant is that the parties had proceeded for mediation. According to the appellant, in mediation, the accused had admitted his liability and had assured the complainant that he shall make payment of the amount due under the cheque, and it was on this account that the appellant did not pursue the complaint. However, the intention of the accused was not clean, and therefore, while misleading the complainant, he continued to appear before the Trial Court and got the complaint dismissed in default and for non-prosecution. Learned counsel submits that the accused has admitted that he is indebted to the complainant.

On the other hand, the submission of learned counsel for the accused is that no settlement was reached in mediation and that is why no settlement agreement was drawn up by the learned Mediator. He submits that the complainant did not appear before the Trial Court on four different occasions, and only thereafter, the complaint has been dismissed in default and for non-prosecution.

On the last date of hearing, the accused had appeared in person. He stated before this Court that he wishes to settle the petitioner's claim by making payment. He sought time to make payment in instalments. This Court had, therefore, directed that the accused should sit with the complainant to work out the plan for payment, which should be placed before the Court along with an affidavit of undertaking. The same has not been done. Today, the respondent accused has appeared with his counsel to oppose the present petition.

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The version of the complainant that the complainant was misled into not appearing before the Court on account of an assurance given by the accused that he shall pay the outstanding amount, appears to be true inasmuch as the accused admitted even before this Court that he wishes to settle the petitioner's claim by making payment in instalments.

In any event, the complaint should be, as far as possible, adjudicated on merits and the same should not be disposed of on mere technicalities when the complainant wishes to pursue the same. The inconvenience caused to the accused in the case can be compensated by way of costs.

Accordingly, the appeal is allowed. The impugned order dated 23.12.2015 is set aside and the complaint is remanded back for re-adjudication from the same stage at which it was when the order dated 23.12.2015 came to be passed. The appellant shall pay costs quantified at Rs.5,000/- to the accused on account of the inconvenience caused to the accused.


VIPIN SANGHI, J

NOVEMBER 28, 2016
B.S. Rohella