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

+ CRL.L.P. 388/2016

RAJBIR

..... Petitioner

Through : Mr. Rajesh Yadav, Adv.
versus

STATE & ANR

..... Respondents

Through : Mr. Tarang Srivastava, APP for R-1.
Mr. Rajeev Saraswati, Adv. for R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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28.11.2016

Leave to appeal granted. Registry to register the petition as an appeal.

Crl.A. 1154 /2016 (to be numbered)

Arguments heard.

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act, 1887 ('the Act' for short). After recording pre-summoning evidence vide order dated 7th January, 2015, trial court summoned accused/respondent under Section 138 of the Act. After service, respondent appeared before trial court on 21st April, 2015. Thereafter, notice under Section 138 of the Act was served upon the respondent on 8th July, 2015 and matter was listed for complainant's evidence on 22nd July, 2015. On 22nd July, 2015, appellant examined himself as CW-1 and thereafter matter was

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adjourned. Respondent filed the application for recalling CW-1, which was taken up on 27th April, 2016. On 27th April, 2016, trial court fixed 4th May, 2016 for recording the statement of accused. On 4th May, 2016, neither appellant nor respondent appeared in person nor were represented through lawyers. Consequently, complaint has been dismissed in default.

Learned counsel for appellant has contended that on 27th April, 2016, appellant had noted the next date of hearing as 5th May, 2016. Accordingly, appellant remained unrepresented on 4th May, 2016. It is further submitted that even respondent had not noted the next date of hearing as 4th May, 2016 and for this reason respondent also remained unrepresented. Photocopy of case diary maintained by learned counsel for appellant has been placed on record. In the diary, next date of hearing has been recorded as 5th May, 2016.

Plea taken by appellant, that wrong date of hearing was recorded, is a probable plea and there is no reason to discard the same. More so, on previous occasions, appellant had been pursuing the matter diligently and appearing in court.

For the foregoing reasons, impugned order dated 4th May, 2016, is set aside and complaint is restored to its original number.

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Appeal is disposed of in the above terms. Parties shall appear before the trial court on 15th December, 2016.


A.K. PATHAK, J.

NOVEMBER 28, 2016/dk