

HIGH COURT OF CHHATTISGARH, BILASPUR

ACQA No. 194 of 2017

Batularam Rao, S/o. Late Ram Lingeshwar, Aged About 53 Years, R/o. Atal Awash Jagdalpur, District Bastar, Chhattisgarh.

---- Appellant

Versus

Sudesh Jacob, S/o. Sudhir Jacob, N.C.T. Church, R/o. House No. 115 Badkash Gali 02 Mother Teresa Ward Jagdalpur, District Bastar, Chhattisgarh.

---- Respondent

For Appellant : Mr. P.K.Tulsyan, Advocate

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

06.11.2017

Heard

1. The present appeal is against the order dated 04.07.2014 wherein the complaint filed under Section 138 read with Section 142 of the Negotiable Instrument Act, 1988 has been dismissed for a single default.
2. Learned counsel for the appellant submits that the complaint under Section 138 of Negotiable Instrument Act was filed alongwith an affidavit and there was no occasion to dismiss the case for a single default as it will lead to irreparable injury, therefore, the complaint may be restored.
3. Perused the order of the Court below. It shows that the complaint was filed on 01.10.2016 wherein the case was fixed for argument on 05.12.2016 and thereafter again it was fixed for argument on 20.03.2017 and on that date the counsel for the complainant was present. Subsequently, on 04.07.2017 the case was dismissed for want of prosecution as no one represented the complainant/ appellant.

4. As has been laid down by the Supreme Court in case of ***Mohd. Azeem Vs. A. Venkatesh and Another*** reported in **(2002) 7 SCC 726**, dismissal on single default is a very strict and unjust attitude resulting in failure of justice. In the instant case, the order sheet would show that for a single non-appearance at the threshold the petition was dismissed. Therefore, in the facts and circumstances of the case, if the dismissal of complaint is allowed to continue it would lead to irreparable loss and may cause failure of justice.
5. Taking into such fact that the complaint was dismissed for the default of single non-appearance and in view of the principles laid down by the Supreme Court in *Mohd. Azeem v. A. Venkatesh* (supra), the dismissal order dated 04.07.2017 is set aside. The complaint case is remitted back to the trial Court to adjudicate a fresh from the stage of its dismissal. The complainant in this case shall appear before the trial Court on 12th December, 2017. The Registry is directed to send back the record forthwith.
6. In view of the above, the petition is allowed.

Sd/-
(Goutam Bhaduri)
Judge