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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRA-S-152-SBA of 2005

Date of decision: September 29, 2017

Mittal Associates

.....Appellant

Versus

Uttam Poultry Farm and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE A.B. CHAUDHARI

Present: Mr. Namit Kumar, Advocate for the appellant.

None for the respondents.

A.B. CHAUDHARI, J (Oral)

This appeal was preferred by the original complainant in a private case No.59/28.03.2000, under Section 138 read with Sections 141 and 142 of the Negotiable Instruments Act, 1881 (for short 'N.I. Act') against judgment dated 09.12.2003 passed by Judicial Magistrate, Chandigarh, by which the complaint filed by the appellant-complainant was dismissed for want of prosecution.

None appeared for the accused-respondents, though, duly served.

Learned counsel for the appellant contended that the trial Court should not have dismissed the case for want of prosecution as the trial Court itself issued notice to the complainant for 09.12.2003 vide order dated 25.09.2003. Under the impugned order, though, the complainant was not served contrary to the earlier order, the complaint was dismissed for want of prosecution.

In my view, the submission made by learned counsel for

the appellant is wholly misconceived inasmuch as it was not the responsibility of the trial Court to invite the complainant for appearing in the Court when the complaint case was itself filed by the complainant. It was the responsibility of the complainant to appear before the trial Court to prosecute its case. Be that as it may, case relating to the bouncing of cheque filed under Section 138 of the N.I. Act should not have been buried without being heard on merits, in the opinion of this Court. Therefore, without finding any fault with the impugned order and in order to give one chance to the complainant to prosecute the case on merits, I think one more chance should be given to the appellant-complainant.

In that view of the matter, this appeal is allowed. Impugned order dated 09.12.2003 dismissing the complaint in default is quashed and set aside. Proceedings of criminal complaint case are sent back to the trial Court for fresh hearing and disposal thereof, accordingly. The trial Court shall issue notices to the parties and thereafter, recover the cost of the notices etc. from the complainant. The complainant, as a pre-condition, shall deposit an amount of ₹1,000/- with the trial Court by way of costs. Parties shall appear before the trial Court on 30.10.2017.

(A.B. CHAUDHARI)
JUDGE

September 29, 2017

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Whether speaking/ reasoned: Yes/No

Whether Reportable: Yes/No