

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

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CRA-AS- 175 of 2017 (O&M)

Date of decision: 09.10.2017

Narender Gaur

...Applicant

Vs.

Parmod Kumar

...Respondent

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

Present: Mr. Sanjeev Kumar Bawa, Advocate, for the Applicant.

Mr. Bhanu Sharma, Advocate, for the respondent

A.B.CHAUDHARI, J. (Oral).

CRM-A-1943-MA of 2016 (O&M)

Heard.

Leave to appeal is granted.

Registry is to issue number of the appeal.

CRA-AS- 175 of 2017

Heard.

Admitted.

Taken up for final disposal.

After issuance of process upon taking cognizance in private complaint under Section 138 of the Negotiable Instruments Act, the case was posted for trial. However, neither the complainant nor his counsel appeared before the trial Court when the case was called upon 29.08.2016 repeatedly. The Court passed the following order:-

“Present:- None for the complainant.

*Accused Parmod on bail represented by
Sh. Devender Rawat, Advocate.*

Case taken up again after lunch. Case called several

times but none has appeared in the Court on behalf of complainant. Waited sufficiently. It is already 4:00 PM. Further wait is not justified. Hence, the present complaint is hereby ordered to be dismissed in default. File be consigned to records room.”

Learned counsel for the accused has vehemently opposed the present appeal and submitted that it was responsibility of the complainant and his advocate to conduct a case vigilantly, but the complainant as well as his counsel remained absent. Learned counsel further points out from para 4 of the application that advocate for the complainant had infact entered the Court for an enquiry in other matter and came to know about the listing of the present complaint on that day and passing of the impugned order also. He, therefore, submits that nothing prevented the advocate for the appellant from calling the appellant when he knew about the said case at least at 3.00 PM. Accordingly, a submission that the advocate had noted a wrong date is incorrect and false, therefore, the appeal should not be entertained.

On the other hand learned counsel for the appellant, relied upon para No.4 of the grounds of appeal and submitted that non-appearance is not deliberate and therefore,a statement in the said ground should be accepted and accordingly, appellant should not be penalised and his case should not be buried without trial. It is, therefore, prayed for allowing the appeal against dismissal of the complaint.

I have carefully considered the rival submissions and also considered the averments in para No.4 of the grounds of appeal. What is stated therein that the counsel for the appellant had entered the court at about 3.00 PM for making enquiry about some other matter. It does not mean that the advocate was aware of the present complaint also being listed. He became aware after entering the Court and also about the passing of the order on 28.09.2016 i.e dismissal of the complaint. In that view of the matter, I do not find any reason qua which the

absence is stated to be false nevertheless seeing the procedure there was no remedy available for the appellant to approach the same court for restoration of the complaint. Hence present appeal was required to be filed. In my opinion the complaint presented by the complainant should be decided on merits rather than the same being dismissed in default for want of prosecution. The accused has to be compensated suitably by the complainant-appellant. In that view of the matter, I think the following order would subsequent in the interest of justice.

Order:-

- i) CRA-AS- 175 of 2017 is partly allowed. The impugned order dated 29.08.2016 noted above is set aside.
 - ii) Crl. Complaint No. 5244 dated 23.11.2015 be restored and decided in accordance with law.
 - iii) Appellant shall pay cost of Rs.25,000/- to the respondent- Parmod Kumar.
 - iv) Parties shall appear before the trial Court. Thereafter the trial Court shall proceed in accordance with law.
- Appeal is accordingly disposed of.

October 09, 2017
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(A.B.CHAUDHARI)
JUDGE

Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No