

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

**CRA-AS-193-2017
Date of decision :15.11.2017**

M/s Rolastar Pvt. Ltd.

..... Petitioner

Versus

Manoj Tarle

..... Respondent

CORAM : HON'BLE MR.JUSTICE H.S. MADAAN

Present : Mr. H.S. Dhillon, Advocate
for the applicant.

H.S. MADAAN, J. (Oral)

Complaint under Section 138 / 142 of the Negotiable Instruments Act filed by complainant – M/s Rolastar Pvt. Ltd. against accused – Manoj Tarle was dismissed for non-prosecution by Judicial Magistrate Ist Class, Gurugram vide order dated 06.10.2014. Accused had been summoned and had put in appearance when the complaint was dismissed for non-prosecution, but presence of accused had not been marked in that order.

Feeling aggrieved, the complainant has approached this Court by way of filing application under Section 378(4) Cr.P.C. for grant of leave to appeal.

Notice of the application was issued to respondent, but

respondent did not appear despite service. After hearing learned counsel for the applicant, the application has been allowed and leave to appeal has been granted.

I have heard learned counsel for the applicant, besides going through the record and I find that the appeal has merit. Learned Magistrate had dismissed the complaint for non-prosecution, however it comes out that the complainant had been prosecuting it properly and its non-appearance on 06.10.2014 seems to be on account of wrong noting down of date as 16.10.2014 as pleaded. The non-appearance does not appear to be intentional or wilful, even otherwise it is also desirable that lis should be decided on merit rather than non-suiting of litigant on technical grounds. Therefore, the appeal is accepted, order under appeal is set aside and case is remanded to Judicial Magistrate Ist Class, Gurugram with a direction to give notice of restoration of the complaint to the accused and to try further from the stage when it was dismissed. The complainant through counsel has been directed to appear before learned Magistrate on 12.12.2017. Consequently, the appeal stands allowed.

Lower Court record if summoned be sent back immediately.

15.11.2017

Gaurav Sorot

**(H.S. MADAAN)
JUDGE**

1. Whether reportable? **No**
2. Whether speaking / reasoned? **Yes**