

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

CRM-A No.1340-MA of 2016 (O&M)

Date of decision: 29.09.2017

M/s. A.D. Filling Station

....Applicant/Appellant

Versus

M/s. Payal Construction Company

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Yadvinder Singh Turka, Advocate
for the applicant/appellant.

ARVIND SINGH SANGWAN J. (Oral)

CRM No.22340 of 2016

Prayer in this application is for condonation of delay of 63 days in filing the appeal.

Heard.

For the reasons stated in the application, the same is allowed and delay of 63 days in filing the appeal stands condoned.

CRM-A-1340-MA of 2016

Leave to appeal granted.

Registry is directed to number the same as main appeal.

Challenge in the present appeal is against the order dated 17.03.2016 passed by the Judicial Magistrate Ist Class, Ambala vide which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act (in short 'the Act') has been dismissed for want of appearance of the appellant/complainant.

It is submitted on behalf of the appellant/complainant that the complaint was initially filed before the Judicial Magistrate Ist Class,

Pehowa. Thereafter, in view of the judgment of the Hon'ble Supreme Court of India, it was returned back to the appellant/complainant for presentation before the competent Court at Hisar. Later on, in view of the Ordinance of 2015 dated 22.09.2015, the Judicial Magistrate Ist Class, Hisar vide order dated 08.10.2015, passed the following order:-

“1. The present complaint has been filed by the complainant under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act).

2. On perusal of the case file, it becomes clear that branch of the bank, where the payee or holder in due course, maintains the account is not situated within the jurisdiction of this Court rather situated within the jurisdiction of the Court situated at Pehowa. Therefore, as per The Ordinance 2015, dated 22.09.2015, present complaint, complete in all respect, containing original complaint, documents and all Court orders is ordered to be transferred to the transferee Court through proper channel. The Ahlmad of this Court, is directed to send the file complete in all respect to the office of ld. Distt. & Sessions Judge, Hisar for furtehr proceeding. Concerned Ahlmad is directed to keep the photocopy of the file, before sending the file to the office of ld. Distt. & Sessions Judge, Hisar, which shall be consigned to record room. Parties are directed to appear in the transferee Court on 18.12.2015.

*Announced in open Court
Dated 8.10.2015*

*Sd/- (Indu Bala)
JMIC, Hisar (Haryana)”*

Counsel for the appellant has further submitted that in pursuance to the said order, the original complaint was transferred to the Court of Judicial Magistrate Ist Class, Pehowa, however,

inadvertently, the office of the District and Sessions Judge, Hisar transferred the same to the Court at Ambala which was not the Court of original jurisdiction where the complaint was filed at the first instance, therefore, the appellant/complainant could not come to know about the pendency of the petition before the Court of Judicial Magistrate Ist Class, Ambala and no notice was served upon him with regard to the fact that the case has been transferred to the Court at Ambala. Accordingly, it is submitted by the counsel that the impugned order dated 17.03.2016 dismissing the complaint on account of non-appearance of the appellant/complainant is wholly unjustified as the Court at Ambala has no jurisdiction and the complaint should have been transferred to the competent Court at Pehowa.

The respondent was served but no one has appeared on his behalf as per the order dated 21.03.2017.

In view of the above facts and circumstances, the present appeal is allowed. The impugned order dated 17.03.2016 passed by the Judicial Magistrate Ist Class, Ambala is set-aside and the complaint No.1659 dated 18.12.2015 is restored to its original number and the District and Sessions Judge, Ambala is directed to transfer the said criminal complaint titled as '*M/s. A.D. Filling Station vs M/s. Payal Construction Company*' to the competent Court at Pehowa, District Kurukshetra.

29.09.2017
yakub

(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No