

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-A-2290-MA-2016 (O&M)

Date of decision: 21.12.2017

Ravi Malhotra

..... Applicant

Versus

Mrs. Radha Khanna and another

..... Respondents

**CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN**

**PRESENT: Mr. Balwinder Singh, Advocate for the applicant.**

None for the respondents.

**RAMENDRA JAIN, J. (ORAL)**

**CRM-40238-2016**

For the reasons mentioned in the application, which is supported by an affidavit, the same is allowed. The delay of 262 days in filing application for grant of leave to appeal is condoned.

**CRM-A-2290-MA-2016 (O&M)**

1. Through the instant application under Section 378(4) Cr.P.C., prayer has been made for grant of special leave to file accompanying appeal against the order dated 17.12.2015, passed by the trial Court, whereby the complaint under Section 138 of the Negotiable Instruments Act, 1881, (for short-'the Act') filed by the applicant was dismissed in default, on account of his non-appearance.

2. Learned counsel *inter alia* contends that initially, the applicant had filed Complaint No. 9 dated 08.01.2014, under Section 138 of the Act

against the respondents and was regularly appearing before the Chief

Metropolitan Magistrate, District South, Saket Courts, New Delhi. In the meantime, the said complaint was transferred to the District Courts at Gurgaon, in view of directions of Hon'ble the Apex Court in **Dashrath Rupsingh Rathod Vs. State of Maharashtra and anothers, 2014 (3) SCC (Cri) 673**. The same was fixed for hearing before the Judicial Magistrate Ist Class, Gurgaon, after two adjournments on 12.12.2015, on which date the complaint of the applicant was adjourned to 17.12.2015, in his absence and his counsel as well. Therefore, the applicant being un-aware of the aforesaid adjourned date i.e. 17.12.2015, could not appear before the trial Court to pursue his complaint. The absence of the applicant or his counsel was not intentional or deliberate, rather the same was on account of the aforesaid reason. Resultantly, his complaint was dismissed in default vide the impugned order. The applicant would suffer an irreparable loss, if the impugned order dated 17.12.2015, dismissing the complaint of the applicant is not set aside. The instant application has been filed, in view of the fact that the Magistrate, has no power to review his own order of dismissal of the complaint.

3. After giving anxious consideration to the submissions made by learned counsel for the applicant, this Court is of the considered opinion that nobody should be condemned unheard. Duty of the Courts is to impart justice to the litigants and not to non-suit them on technical grounds. In the instant case, only on a single default of the applicant or his counsel, his complaint was dismissed vide impugned order which is a very harsh step taken by the trial Court.

4. Considering the overall facts and circumstances of the case, the impugned order dated 17.12.2015, is set aside. The trial Court is

directed to proceed further with the complaint of the applicant, in accordance with law, by restoring the same to its original number.

5. The instant Criminal Miscellaneous Application, stands disposed of, accordingly.

**December 21, 2017**  
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**( RAMENDRA JAIN )**  
**JUDGE**

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|----------------------------------|---------------|
| <b>Whether speaking/reasoned</b> | <b>Yes/No</b> |
| <b>Whether Reportable</b>        | <b>Yes/No</b> |