

CRM-A-1463-MA-2014

Date of decision: 18.07.2017

Krishan Kumar

...Applicant

Versus

Sushma Devi

...Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Jitender S. Chahal, Advocate, for the applicant.

Ms. Sunita Nambiar, Advocate for
Mr. Balkar Singh, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

The applicant has filed an application for seeking leave to appeal under Section 378(4) Cr.P.C.

Heard.

Leave to appeal is granted. Registry is directed to numbered as main appeal.

Main appeal

It is submitted on behalf of the applicant that the applicant-complainant has filed a complaint before the trial Court under Section 138 of the Negotiable Instruments Act as the cheque, dated 20.03.2012, for a tune of Rs. 90,000/-, allegedly issued by the respondent-accused was dishonoured by the Bank.

The trial Court, vide order dated 23.07.2014, dismissed the complaint on account of non-appearance of the applicant.

Vide order dated 15.10.2012, the respondent-accused was summoned and the case remained pending for few dates as the notice issued to the respondent-accused was received back unserved or was not received either served or otherwise.

On 23.07.2014, the case was again listed for effecting service on the respondent-accused and the trial Court recorded that no one has put in appearance on behalf of the appellant and service of the respondent-accused is not effected and dismissed the complaint for want of prosecution. It is, thus, contended that in fact the applicant was making efforts to serve the respondent-accused and therefore, the dismissal of the complaint on account of non-prosecution is not justified. It is also contended that the complaint has been dismissed without affording any opportunity of hearing to the applicant and the appellant should not be condemned unheard.

Learned counsel appearing for the respondent has further opposed the prayer by submitting that the non-appearance of the applicant was intentional. However, she could not dispute the fact that the respondent-accused had not put in appearance before the trial Court on the date when impugned order was passed.

After going through the record and considering the submission made by the applicant, the impugned order dated 23.07.2014 is set aside and the matter is remanded back to the trial Court for deciding the same on merits.

The parties are directed to appear before the trial Court on 28.08.2017.

Lower Court records be also sent back forthwith.

(ARVIND SINGH SANGWAN)
JUDGE

18.07.2017
Hemlata

Whether speaking/reasoned
Whether reportable

Yes / No
Yes / No