

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRM-A-1706-MA of 2015 (O&M)
Date of Decision: 20.02.2017

Narinder Singh

...Applicant-appellant

VERSUS

Harbhajan Kaur

.....Respondent

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr.Kanwalvir Singh Kang, Advocate
for the applicant-appellant.

Mr.Sumit Singh Bairagi, Advocate,
for the respondent.

SURINDER GUPTA, J.(Oral)

Reply filed in Court today is taken on record.

Heard.

There is a delay of 116 days in filing the present appeal. Learned counsel for the applicant submits that the appellant was not aware of the dismissal of the complaint filed by him vide order dated 15.4.2015. He came to know of this in August, 2015 when he made inquiries from his counsel. Earlier the case was referred for settlement through Mediation which could not succeed. Thereafter, counsel for the complainant was handling the case but he never intimated the complainant about his appearance in Court.

Non-appearance of complainant on 30.03.2015 and then on 07.04.2015 was due to lack of communication by his counsel. Perusal of copies of orders passed earlier show that applicant-appellant (complainant) had been appearing in Court regularly. He had appeared even during

mediation proceedings and there appears to be no reason for him not to appear and get the case dismissed for want of his appearance.

Learned counsel for the respondent submits that delay of 116 days in filing the instant appeal is not duly explained. Due to non-appearance of complainant on 30.03.2015 and 07.04.2015, the Court was left with no other option but to dismiss the complaint.

On giving a careful thought to submissions of learned counsel for the parties and on perusal of file, I find substance in submission of learned counsel for applicant-appellant (complainant). Perusal of file shows that complainant had been appearing regularly in Court after presentation of complaint on 24.07.2014. Thereafter, the matter was referred for mediation vide order dated 28.11.2014. Even during mediation proceedings, the complainant had been regularly appearing. On an occasion presence of accused-respondent was exempted on the application filed by his counsel. A person, who had been pursuing his complaint regularly, may have no reason to get it dismissed due to his non-appearance and then to come to this Court to get the same restored. It appears that there was some miscommunication between the complainant and his counsel, which resulted in his non-appearance and dismissal of complaint.

Keeping in view above facts, application seeking condonation of delay in filing the instant appeal is allowed and delay of 116 days is condoned and application seeking leave to appeal is also allowed.

Consequently, this appeal has merit and the same is accepted. Impugned order is set aside. The case is sent back to the trial Court/successor Court to decide the same on merit.

Parties will appear before the trial court on 22.3.2017. Learned

trial Court will proceed with the trial and decide the same in accordance with law.

February 20, 2017
jk

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>