

In the High Court of Punjab & Haryana at Chandigarh.

**CRM-A-1988-MA-2015 in/and
CRA-S_____SB of
Date of decision: 25.09.2017**

M/S NARANG CARD GALLERY SIRSA THR ITS PROP LEELAWATI
..... Petitioner.

VS.

M/S ADEEB ART PRESS THR ITS PROP NARINDER KUMAR & ANR
..... Respondents.

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr.Rakesh Nagpal, Advocate
for the applicant.

None for the respondents despite service.

MAHABIR SINGH SINDHU,J.(ORAL)

This is an application filed under Section 378(4) of the Code of Criminal Procedure, 1973, for grant of special leave to appeal.

On the last date of hearing i.e. 17.04.2017, none appeared on behalf of the respondents despite service. Today also there is no representation on their behalf. It seems that respondents are not interested to contest the matter.

Hence, this Court has no choice but to proceed with the matter.

It is submitted by learned counsel for the applicant that counsel who was appearing for the applicant before learned trial Court had noted a wrong date as 09.10.2015 instead of 08.10.2015.

In view of the above, sufficient ground is made out to grant special leave to appeal.

Consequently, the application is allowed and leave to file an appeal is granted. Office is directed to assign the number of the appeal.

CRA-S-_____SB-

It is contended by learned counsel for the appellant that there is sufficient material available on record showing non-appearance of the appellant as well as his counsel before the learned trial Court on 08.10.2015 and which was not intentional; but due to the fact that wrong date i.e. 09.10.2015 was noted and that is the only reason that neither applicant, nor

his counsel appeared at the time of hearing on 08.10.2015, when the impugned order was passed. It is further submitted that non-appearance on 08.10.2015 has sufficiently been proved.

I have given my thoughtful consideration to the matter and perused the paper book.

Record reveals that this is the only date i.e. 08.10.2015 when the appellant could not appear either in person; or through his counsel and non-appearance is sufficiently explained by producing the diary of learned counsel representing the appellant before learned trial Court as well as photocopy of brief as Annexures A-3 to A-6.

In view of the above, the impugned order dated 08.10.2015 is set aside and the matter is remanded to the learned trial Court to proceed in the matter according to law.

Both the parties shall appear before the learned trial Court on 31.10.2017.

Since the appeal has been decided without issuing notice to the opposite side in view of the fact that respondents have chosen not to appear in the application filed under Section 378 (4) of the Cr.P.C. for grant of special leave to appeal and, therefore, it seems that they are not interested to pursue the matter and this Court does not feel it appropriate to burden the respondents with avoidable litigation.

Still in case the respondents feel aggrieved against the order passed by this Court today in the main appeal, they are at liberty to move an appropriate application for recalling of the same.

It is, however, also made clear that the applicant shall not repeat such lapse(s) in future before learned trial Court.

Disposed off.

(MAHABIR SINGH SINDHU)
JUDGE

25.09.2017.
smriti

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