

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

214/1

**CRM-A-349-MA-2017 (O&M).
Date of Decision: 05.09.2017.**

Suman Josen

....Applicant.

Versus

M/s Catmoss Retail Private Ltd. & others

....Respondents.

CORAM: HON'BLE MR. JUSTICE RAMENDRA JAIN

Present: Mr. Mukesh Kumar Verma, Advocate for the applicant.

Ramendra Jain, J.(Oral)

CRM-5712-2017

Delay condoned.

CRM-A-349-MA-2017

Through this application under Section 378(4) of the Code of Criminal Procedure (for short, 'Cr.P.C.'), the applicant-complainant has prayed for grant of special leave to appeal against the order dated 27.09.2016 passed by Judicial Magistrate Ist Class, Chandigarh dismissing the complaint of the applicant for want of prosecution.

Briefly stated, the applicant-complainant filed a complaint under Section 138 read with Section 141/142 of the Negotiable Instruments Act (for short, 'the Act') and Sections 420/467/468/471 of the Indian Penal Code (for short, 'IPC') against the respondents-accused in which the respondents were summoned vide order dated 07.10.2013, but could not be served despite issuance ofailable and nonailable warrants on several

occasions. The complaint was filed in the year 2013 and finally was

dismissed for want of prosecution vide order dated 27.09.2016 (which has been impugned herein) on account of non appearance of the applicant.

Learned counsel for the applicant contends that on a single default, the learned trial Court should not have dismissed the complaint. The absence of the applicant was not willful, rather was on account of noting down the wrong date i.e. 29.09.2016 instead of actual date i.e. 27.09.2016. The applicant shall suffer irreparable loss if the order impugned is not set aside. In fact, it is a punishment to the applicant only on account of her non appearance on one date, that her complaint was dismissed for want of prosecution.

Heard.

The applicant has been appearing on each and every date since last three years right from the year 2013 when she filed the complaint. The punishment of dismissal of complaint to the applicant is disproportionate to her non appearance on a single date.

Considering over all facts and circumstances, leave to appeal is granted. The resultant effect would be that the impugned order dated 27.09.2016 passed by Judicial Magistrate Ist Class, Chandigarh is set aside. The trial Court is directed to restore the complaint at its original number and to proceed further with the same in accordance with law.

Disposed of.

05.09.2017

jitender sharma

(RAMENDRA JAIN)
JUDGE

Whether speaking/ reasoned : Yes/ No

Whether Reportable : Yes/ No