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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 304/2016

DELFIAB GLOBAL PVT LTD

..... Petitioner

Through : Ms. Neelam, Adv.

versus

STATE (NCT OF DELHI) & ANR

..... Respondents

Through : Dr. M. P. Singh, APP.

Mr. Anshul Garg, Adv for R-2.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

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06.01.2017

CRL.L.P. 304/2016

Heard. Leave to appeal granted. Registry to register this petition as an appeal.

Crl.A. No. 28 /2017 (to be numbered)

Appellant filed a complaint under Section 138 of the Negotiable Instruments Act before the trial court. Respondent no.2 (accused) was summoned and he also appeared before the trial court and participated in the proceedings.

During the pendency of trial, on 4th April, 2016, neither the appellant nor respondent no.2 (accused) appeared in Court. They remained unrepresented by their respective counsel, as well. Consequently, complaint

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case was dismissed for non-prosecution and non-appearance of appellant (complainant).

Appellant filed the review application, which has been dismissed by the trial court vide order dated 4th May, 2016, which reads as under:-

“ This is an application wherein it has been submitted that on 23.02.2016, the NDOH was fixed for 04.05.2016 and same was noted by them, however in the order sheet the NDOH got recorded as 04.03.2016. On 04.03.2016 none appeared and matter was fixed as per order-sheet for 04.04.2016. On 04.04.2016 it was taken up and was dismissed for non-appearance.

It is submitted that since complainant side recorded the NDOH as 04.05.2016, therefore complainant did not appear for 04.03.2016 and 04.04.2016 and even accused side did not appear on said two dates. It is also submitted that one noting of 04.05.2016 as NDOH is available on the cover of case file.

Submission made in the application considered. Though it appears that grievance of the complainant is genuine but the hands of this court are tied and since matter already stands dismissed by this court, therefore, this court cannot review its order. Hence application stands disposed off.

Dasti copy of order be given as prayed for.”

The plea of appellant that next date of hearing was wrongly noted as 4th May, 2016, instead of 4th March, 2016 is a probable and plausible plea. There is every possibility of a litigant or his lawyer noting down a wrong

date due to inadvertent error. Appellant was nothing to gain from his non-appearance. It is noted that a perusal of order dated 4th May, 2016, as quoted above, also supports the plea of the appellant that date was wrongly noted as 4th May, 2016 instead of 4th March, 2016. It appears that for this reason even respondent no.2 had also remained unrepresented.

For the foregoing reasons, the impugned order dated 4th April, 2016 is set aside and the complaint is restored, subject to however, costs of ₹10,000/- to be paid by the appellant to respondent no.2.

Parties shall appear before the trial court on 13th February, 2017.

Appeal is disposed of in the above terms.


A.R. PATHAK, J.

JANUARY 06, 2017/dk