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

+ **CRL.M.C. 489/2011**

STATE BANK OF INDIA

..... Petitioner

Represented by: Mr. Abhishek Paruthi, Adv.

versus

AMIT KUMAR GUGLANI

..... Respondent

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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09.01.2017

Notice was issued to the respondent. As per the service report regarding notice through ordinary process on the first address the premises was found locked and on the second address no such person was found residing. Service report of service through speed post is awaited.

An affidavit of service through dasti service has been placed on record stating that the respondent has refused to accept the service.

The petitioner filed a complaint before the learned Metropolitan Magistrate being complaint case No.4697/08 titled as '*State Bank of India Vs. Amit Kumar Guglani*' under Section 138 of Negotiable Instruments Act wherein summons were issued to the respondent on 27th August, 2008. Despite efforts respondent could not be served. On 6th October, 2010 the complaint was dismissed as none was present on behalf of the complainant despite repeated calls.

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The explanation of learned counsel for the petitioner is that since a wrong date was noted and instead of 6th October, 2010, 16th October, 2010 was noted in the diary of the counsel, he could not appear on 6th October, 2010 when the complaint was dismissed.

A perusal of the order sheets would reveal that on all the previous dates counsel for the petitioner was appearing and his absence was only on 6th October, 2010. The explanation rendered by the learned counsel for the petitioner/ complainant is plausible.

Considering the fact that a wrong date was noted due to which the counsel could not appear on 6th October, 2010, the order dated 6th October, 2010 passed by the learned ACMM dismissing the complaint in default is set aside. Complaint No. 4697/08 titled as '*State Bank of India Vs. Amit Kumar Guglani*' is restored to its original position. Learned counsel for the petitioner/ complainant will appear before the learned ACMM on 3rd February, 2017.

Petition is disposed of. Order dasti.

MUKTA GUPTA, J.

JANUARY 09, 2017
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