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

+ CRL.L.P. 148/2016

GURCHARAN SINGH Petitioner
Through : Mr. D.K. Yati, Adv.

versus

NARINDER SINGH Respondent
Through Mr. S.S. Oberoi, Adv.

CORAM:

HON'BLE MR. JUSTICE A.K. PATHAK

ORDER

% 24.01.2017

CRL.L.P. no. 148/2016

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

Crl. A. No. 113 /2017 (to be registered and numbered)

With the consent of the parties, I have heard the learned counsel for the parties and propose to dispose of the appeal by this order.

Vide order dated 23rd December, 2015, complaint under Section 138 of the Negotiable Instruments Act, 1881 ("the Act", for short) of the petition has been dismissed in default and for non-prosecution. Trial court has noted that none had appeared for the complainant (appellant) on the last three dates of hearing.

Learned counsel for the appellant has contended that parties were referred to the Mediation Centre. Respondent had admitted his liability in the Mediation Centre and had assured the petitioner that he will make the payment of the amount due under the cheque. Accordingly, appellant did not pursue the complaint, believing the words of respondent that he will make payment. However, respondent continued to appear despite asking the appellant that he will make payment.

Learned counsel for the respondent has contended that no settlement was reached in the Mediation Centre and for this reason alone, no Settlement Agreement was drawn by the learned Mediator.

It is noted that petitioner had filed three complaints, which were taken up together and were dismissed in default for non-prosecution on the same day. In one of the cases, petitioner filed CrI. L.P. No. 147/2016 against the order of dismissal of complaint, wherein appeal has been allowed by a Bench of coordinate jurisdiction vide order dated 28th November, 2016 after granting the leave to appeal. In the said order, it has been noted that respondent had shown his willingness to settle the matter even during the pendency of criminal leave petition. Learned counsel for the respondent submits that respondent has all the intention to settle the matter but the

parties could not reach at the consensus regarding the amount, which was payable.

In the above facts, there is no reason to disbelieve the appellant that he did not appear before the trial court under the impression which he might have gathered during the mediation proceedings. The plea taken by him is a possible plea, in view of the conduct of respondent that he has shown willingness to settle the disputes. It is trite law that a complaint should be, as far as possible, adjudicated on merits and the same should not be disposed of on mere technicalities. Appellant was not to gain anything by not appearing before the trial court and getting the complaint dismissed in default.

For the foregoing reasons, appeal is allowed and impugned order dated 23rd December, 2015 is set aside and the complaint is remanded back for re-adjudication from the same stage at which it was when the order dated 23rd December, 2015 came to be passed, subject to, however, cost of ₹5,000/- to be paid by the appellant to the respondent.

Parties shall appear before the trial court on 1st March, 2017.

Appeal is disposed of in the above terms.

Crl. M.A. No. 3671/2016

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Application is disposed of as infructuous.


A.K. PATHAK, J.

JANUARY 24, 2017

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