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

+ CRL.A. 275/2017

JATIN RAWAL

..... Appellant

Through: Mr. Amit Chauhan and Love Deep
Gaur, Adv.

versus

RAJESH KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER
14.03.2017

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None appears for the respondent when the matter is called out. The respondent has already been served in the matter and was earlier represented through counsel. In view of the aforesaid, I proceed to judgment. While granting leave, the following order was recorded on 09.03.2017:

“The petitioner has preferred the present leave petition to seek leave to appeal against the order dated 04.07.2015 passed by the learned MM, NI Act (Central-01), Tis Hazari Courts, Delhi in CC No.8873/2013, whereby the complaint preferred by the petitioner u/s 138 of Negotiable Instrument Act has been dismissed for non prosecution and the respondent/ accused acquitted.

The submission of counsel for the petitioner is that in the aforesaid case, the respondent/ accused was summoned. He

appeared before the Trial Court on 16.08.2014 when the parties stated that the matter had been amicably settled and the accused is willing to make payment. The matter was referred for mediation on joint request and the next date in the case was fixed as 22.08.2014. On 22.08.2014, the court was informed that the matter is pending in mediation. Consequently, the proceedings were adjourned to 30.08.2014.

On 24.09.2014, a settlement was arrived at between the parties in mediation. The settlement agreement signed by the parties, their counsels as well as the learned mediator and co-mediator is placed on record. Under the settlement, the accused agreed to make a payment of Rs.6 lacs to the complainant in full and final settlement. The said amount had to be paid in three instalments of Rs.2 lacs each on 30.03.2015, 30.06.2016 and 30.12.2016. On 30.09.2014, when the matter was taken up, the court was informed that the first instalment is payable in March 2015. Consequently, it was adjourned to 15.03.2015 (though wrongly typed as 2014). On 16.03.2015, the matter was adjourned to 24.04.2015. On the said date, the presiding officer was functioning as the link magistrate. Consequently, the matter was adjourned to 04.07.2015, when the same was dismissed for non prosecution.

Counsel for the petitioner submits that the respondent did not adhere to the settlement. He submits that counsel for the petitioner/ complainant appearing before the Trial Court did not appear on the said date on account of the serious illness of his father Sh. Ashwini Malhotra. In this regard, he has placed on record a copy of the prescription issued by the Institute of Liver and Bellary Sciences, Vasant Kunj, New Delhi.

The respondent has filed his reply. A perusal of the reply shows that the respondent has not disclosed any prejudice suffered by him on account of the non appearance of the complainant on the said date. He also does not disclose as to what prejudice he shall suffer in case the present appeal is allowed and the impugned order is set aside. When the matter is called out, none has appeared for the respondent.

In view of the aforesaid, leave is granted”.

The submission of counsel for the appellant is that the appellant would be highly prejudiced in case the complaint of the appellant is not decided on merits. He submits that the facts taken note of in the order dated 09.03.2017 show that the respondent has actually admitted his liability. He further submits that the non appearance of the appellant or his counsel on 04.07.2015 has been explained by the appellant and the justification is sufficient.

Having heard learned counsel, perused the record including the prescription in relation to the father Sh. Ashwini Malhotra issued by the Institute of Liver and Biliary Sciences, and the fact that the respondent has virtually admitted his liability under the settlement dated 28.04.2014, in my view, the impugned order cannot be sustained. The same is accordingly set aside. The complaint is restored to its original number.

The appellant shall appear before the learned Magistrate on 10.04.2017. The learned Magistrate shall proceed after putting the respondent to notice in the matter.

VIPIN SANGHI, J

MARCH 14, 2017

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