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

+ **CRL.L.P. 657/2014**

GULSHAN ARORA Petitioner
Through: Mr. Alok Pandey, Advocate.
Versus
MS. ALKA KAUSHAL Respondent
Through: Ms. Tara Ganju and Mr. Vaibhav
Nautiyal, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

% **28.11.2017**

This petition seeks quashing of the impugned order dated 15.02.2014 passed by the learned Metropolitan Magistrate in Complaint Case No.234/1/10 under section 138 of the Negotiable Instruments Act, 1881. The impugned order reads as under:-

“CC No. 234/1/10

15.02.2014

*Present:- Proxy Cl Mr. K.C. Suman for the complainant
Accused on bail along with Ld counsel.*

Today the matter was fixed for the evidence of the complainant but an exemption application has been moved on behalf of the complainant on the ground that he is unwell.

It is noteworthy that the medical documents furnished show that the complainant was discharged from the hospital on 03.02.14 itself & there is no other latest medical document furnished. Moreover, the exemption application has been signed by the proxy counsel and not by the complainant or by his main counsel. Perusal of the record shows that previously also the complainant had been negligent in pursuing the present complaint against which cost were imposed upon the complainant which have also been not paid till date by the

complainant. It is also noteworthy that none appeared for the complainant on the last date of hearing. The complainant has been utterly negligent towards the court proceedings and complainant himself had been delaying the matter on one pretext or the other. Already in the interest of justice, sufficient opportunities have been given to the complainant to pursue the present complaint and for leading the evidence.

After perusing the record, it appears that the complainant is not interested in pursuing the present matter. Laxity of the complainant can not be countenanced further. Therefore the present case is dismissed in default for non appearance and for want of prosecution.

Accused is hereby acquitted.

File be consigned to the record room after due compliance.

*Sd/-
MM-01/North/Rohini/Delhi
15.02.2014”*

The said order was then challenged in appeal, wherein the Appellate Court recorded as under:-

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Anr.*

17.4.2014

Present: Ms Kanika Chauhan, adv. for appellant.

It is reported by the Ahhnad that PF had not been filed. Still the summons were sent by registered post, which returned due to insufficiency in postage It appears that appellant is not taking any interest in this appeal. The complaint before the trial court was also dismissed due to non prosecution. However, Ms Kanika Chauhan, adv. seeks one more opportunity to comply with the directions of this court. Request is allowed. However, appellant is directed to appear in person before this court so that this court may be convinced as to

whether appellant is interested for prosecution of appeal or not.

Issue fresh summons to respondent on filing of PF and RC on Mumbai address.

Put up the matter for further proceedings on 30.4.2014.

*Sd/-
Spl. Judge-II, CBI, Rohini
17.04.2014”*

On 30.04.2014, the following order was passed:-

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Anr.*

30.4.2014

Present: Appellant in person with Ms. Kanika Chauhan, adv.

The notice of respondent which was sent through registered post received back with the report that she has left the given address. Let fresh notice be sent to respondent no.1 on both addresses. The notice at Delhi address may be served by way of affixation and the notice at Mumbai address may be sent through registered post on filing of PE.

Put up the matter for further proceedings on 10.05.2014.

*Sd/-
Spl. Judge-II, CBI, Rohini
30.04.2014”*

On 10.05.2014, the following order was passed:-

*“CC No. 2/2014
Gulshan Arora Vs State & Anr.*

10.5.2014

Present: Appellant in person with Sh. Alok Kumar Pandey, Adv.

The respondent has been served by way of affixation at

Delhi address. However, none has appeared despite several calls. The notice sent through registered post has neither been received back nor its A/D received.

Put up the matter for further proceedings on 26.05.2014.

*Sd/-
Spl. Judge-II, CBI, Rohini
10.5.2014”*

On 26.05.2014, the following order was passed:-

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Anr.*

26.5.2014

Present: Sh. K. K. Sinha, adv. For appellant.

It is submitted by Ld. Counsel for appellant that he has got the fresh address, which he would file in the court. Let him file fresh memos of parties with correct address of respondent. Request allowed.

To come up for this purpose on 27.5.2014.

*Sd/-
Addl. Sessions Judge cum
Spl. Judge-II, CBI, Rohini
26.5.2014”*

On 27.05.2014, the following order was passed:-

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Anr.*

27.5.2014

Present: Sh. Kanika Chauhan, adv. for appellant.

Appellant has filed fresh address of the respondent, the same is taken on record.

Fresh memos of parties be filed with new address.

To come up for arguments on maintainability before this court.

To come up for this purpose on 30.5.2014.

*Sd/-
Addl. Sessions Judge cum
Spl. Judge-II, CBI, Rohini
27.5.2014”*

On 30.05.2014, the following order was passed:-

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Anr.*

30.5.2014

Present: Appellant with counsel Sh. K. K. Sinha, adv.

Ld. Counsel for appellant seeks adjournment to address arguments on the maintainability of the appeal before this court. I allow his request.

To come up for arguments on 4.6.2014.

*Sd/-
Addl. Sessions Judge cum
Spl. Judge-II, CBI, Rohini
30.5.2014”*

On 4.6.2014, the following order was passed:-

“Pr: Sh. Alok Kumar Pandey, Adv. for appellant.

*Ld. Counsel seeks adj. Heard. Allowed.
Come up for arguments on 6.6.2014.*

*Sd/-
Spl. Judge/ASJ
4.6.2014”*

On 06.06.2014 the following order was passed by the learned Additional Sessions Judge, whereby the petitioner withdrew the appeal and had filed the present petition.

*“Criminal Appeal No. 2/2014
Gulshan Arora Vs State & Ors.
6.6.2014*

Present: Sh. Alok Kumar Pandey, adv. for appellant

Ld. Counsel for appellant wants to withdraw the present appeal with liberty to file the same in Hon’ble High Court of Delhi. Let his statement be recorded.

Statement of Sh. Alok Kumar Pandey, adv. for appellant.

In view of Subhash Chand Vs State decided by Hon'ble Supreme Court of India on 8.1.2013 and in view of 2013 (3) RCR (Criminal) 1005 M/s Tata Steel Ltd. Vs. Atam Tube Products Ltd. & Ors. Punjab & Haryana High Court, I withdraw the present appeal with liberty to file the criminal appeal before Hon'ble High Court of Delhi.

*Sd/-
Addl. Sessions Judge cum
Spl. Judge-II, CBI, Rohini
6.6.2014*

ORDER

In view of the above statement of Ld. Counsel for appellant, the appeal is dismissed as withdrawn with liberty to file the same before the Hon'ble High Court of Delhi. Copy of the order along with the trial court record be returned to the trial court. Appeal file be consigned to record room.

*Sd/-
Addl. Sessions Judge cum
Spl. Judge-II, CBI, Rohini
6.6.2014”*

The proceedings before this Court tell yet another story of tardiness in pursuing the matter. Notice was directed to be issued on 31.10.2014, however, it could not be so done or served on the respondents because of the

petitioner's continued non-prosecution of the case on several dates. The order sheets bear this out as under:-

ORDER
01.05.2015

Notice could not issue as process fee was not filed on the last occasion as well. As a last and final opportunity, issue notice to respondent no.2 returnable on 06.08.2015 at all the addresses by all permitted modes. The notice be taken dasti as well as through speed post. The tracking report in respect of the speed post shall be filed at least one week prior to the next date.

ORDER
06.08.201

The respondent has not been served.

Issue fresh notice to the respondent by all permitted modes, on the leave petitioner taking necessary steps within one week, returnable on 15.12.2015.

ORDER
15.12.2015

At request of counsel appearing on behalf of the petitioner the matter is adjourned.

Renotify on 06.04.2016.

ORDER
06.04.2015

1. Since morning only the proxy counsel for the petitioner is present and main counsel is stated to be busy in some other Court.

2. Even steps for service of respondent has not been taken by the petitioner till date.

3. In the interest of justice, one more opportunity is granted to the petitioner to take necessary steps for service of respondent.

4. Petitioner is directed to take necessary steps for service of respondent within two weeks and thereafter notice be issued to the respondent vide ordinary process, speed post, courier and dasti, returnable for 8th August, 2016.

ORDER

08.08.2016

Notice could not be issued to the respondent as process fee was not filed.

Subject to the petitioner taking steps, notice be issued to the respondent through ordinary process, registered AD post and courier service, returnable for 17th January, 2017

ORDER

17.01.2017

Learned counsel for respondent submits that complete paper book has not been received by her. Learned counsel for petitioner to supply the complete paper book to learned counsel for respondent within one week.

List on 28th April, 2017. Reply, if any, be filed in the meanwhile.

ORDER

28.04.2017

The learned counsel appearing for the petitioner seeks some time to file additional documents in support of his case.

Re-notify on 01.08.2017.

In the mean time, complete copy of the paper book be furnished to Ms. Tara Ganju, the learned advocate for respondent no.2.

ORDER

01.08.2016

Notice could not be issued to the respondent as process Despite an order of this Court to supply a copy of the paper book to the learned counsel appearing for the respondent, the

same has not yet been done.

From the records, it further appears that no attempt has been made by the petitioner to pursue this petition.

Today also, a prayer for adjournment has been made on the ground that the main counsel is not available.

It appears that the petitioner has lost interest in the matter. It is made clear that if on the next date, the matter is not argued, this Court will consider the desirability of dismissing this petition.

Learned proxy counsel for the petitioner is directed to furnish a copy of the paper book to the learned counsel for the respondent within a period of one week.

List on 19th September, 2017.

ORDER
19.09.2017

Mr. B.K. Singh, learned proxy advocate submits that on the next date, no adjournment would be sought and the matter would be argued.

Let a copy of the complete paper book be handed over to Ms. Tara Ganju, learned advocate appearing for the respondent.

Re-list on 16.10.2017.

ORDER
16.10.2017

Renotify on 28.11.2017.

The petitioner was required to pay a cost of Rs.5,000/- in terms of the Trial Court order dated 25.07.2013, which has not yet been deposited. Even

an application seeking condonation of delay in depositing the amount was never moved by him. The impugned order records the reasons why it came to the conclusion that the case should be dismissed for non-prosecution. The order is self-explanatory. No fault can be found with the reasoning. Indeed, the petitioner's conduct in this petition too portrays a similar disinterested, lackadaisical and tardy attitude and conduct inasmuch as he took more than 18 months just to serve the notice upon the respondents.

The learned counsel for the respondents submits that the cost imposed upon the petitioner by the Trial Court was not only Rs.5,000/- but a cost of Rs.1,000/- also was imposed on a date prior to 25.07.2013. All these amounts remain unpaid. She submits that the cheque concerned was actually in favour of one Mr. Prashant Mamgain, as a security amount, and it had nothing to do with the petitioner. The respondent had desired to cross-examine the petitioner but the latter neither appeared for the cross-examination nor did he formally seek adjournment on the days he defaulted in appearance. It was in those circumstances that the costs were imposed. The learned counsel further submits that if the petitioner was really at loss of legitimate monies and was interested in recovering his Rs.15,00,000/-, as alleged, he would have pursued the matter with diligence.

In view of the aforesaid, the Court is of the opinion that the manner in which the case has been pursued throughout is reflective of lack of interest on the part of the petitioner and is an abuse of the process of the Court. No case is made out. The petition is without merit and is accordingly dismissed.

NAJMI WAZIRI, J.

NOVEMBER 28, 2017/sb