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

+ **CRL.M.C. 211/2017**

S K KATIYAR

..... Petitioner

Represented by: **Mr. Dilip Singh, Advocate.**

versus

SUDHIR GANDHOTRA

..... Respondent

Represented by: **None.**

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

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18.01.2017

Crl. M.A. No. 936/2017 (Exemption)

Allowed, subject to all just exceptions.

CRL.M.C. 211/2017 and Crl. M.A. No. 935/2017 (Stay)

1. Aggrieved by the order dated 22nd September, 2016 dismissing the revision petition filed by the petitioner against the order dated 16th February, 2016 the petitioner prefers the present petition.
2. The petitioner is facing trial in complaint cases Nos. 1510/2015 and 1511/2016 titled as 'Sudhir Gandotra vs. M/s CUSP Infra Projects Ltd. & Anr.' under Section 138 of Negotiable Instruments Act, 1881 (in short 'NI Act').
3. The application of the petitioner under Section 145 (2) of the NI Act was rejected by the learned Metropolitan Magistrate on 16th January, 2014. The petitioner along with the company challenged the said order and vide order dated 4th April, 2014 in Crl. M.C. No. 1647/2014 this Court while
CRL.M.C. 211/2017

disposing of the petition made it clear that in case the petitioner and the company fails to cross-examine the respondent/complainant on the date fixed, then no further opportunity would be given to the petitioners to cross-examine the respondent and their application under Section 145 (2) NI Act shall be deemed to be dismissed. Further if the petitioner fails to produce the defence evidence before the learned Trial Court on the date fixed, the defence evidence will also be closed.

4. On 18th November, 2014 statement of the complainant was recorded before the learned Trial Court. Thereafter the petitioner did not take interest in the proceedings as is evident from the various orders.

5. On 16th February, 2016 when the matter was listed for cross-examination of CW1 by way of last and final opportunity to both the sides learned proxy counsel for the petitioner sought for a pass-over as the arguing counsel was busy in other Court. The matter was passed-over thrice and hence the opportunity to the petitioner to cross-examine CW1 was closed. The matter was listed for recording of the statement of the petitioner under Section 313 Cr.P.C. on 19th April, 2016. The petitioner challenged the order dated 16th February, 2016 in revision wherein the revisional court held that there was no infirmity in the impugned order.

6. A perusal of the record reveals not only on 16th February, 2016, but even thereafter the petitioner has not been acting with due diligence and in the garb of the fact that the petitions are pending before the revisional court adjournments are being sought.

7. Considering the fact that only one opportunity was granted which the petitioner failed to avail this Court finds no reason to interfere with the

orders of the learned Metropolitan Magistrate and the learned Additional Sessions Judge.

8. Petition and application are dismissed.

MUKTA GUPTA, J.

JANUARY 18, 2017

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