

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1272 of 2018**

- P Devdas S/o Ramaiyaa Aged About 40 Years R/o Street No. 53 Qtr No. 25 B Zone 2 Sector 11 Khurseepar Bhilai Tehsil And District- Durg, Chhattisgarh.

---- Petitioner

Versus

- Suresh Kumar S/o Late Manglu Ram Aged About 40 Years Office Address- Personal No. 895959 Technician Mechanical, (M.C.), Through- D.G.M. Bhilai Steel Plant Foundry Section, Molding Bhilai, Tehsil And District- Durg, Chhattisgarh.

---- Respondent

For Petitioner : Shri Purnendra Khichariya, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma
Order on Board

23/10/2018

1. Heard on I.A.No.1/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and delay of 371 days in filing the petition is condoned.
3. Also heard on the application for grant of leave to appeal filed under Section 378 (4) Cr.P.C.
4. The instant Cr.M.P. has been filed seeking leave to appeal against the order dated 7.2.2017, passed by the Judicial Magistrate First Class, Durg (CG) in Criminal Complaint Case No.8975/2015, wherein the said Court has dismissed the complaint filed under Section 138 of the Negotiable Instruments Act, 1881 for want of prosecution.

5. A complaint was filed on 14.9.2015. It was registered on 28.10.2015. Thereafter, order sheets were written for issuing summons to the respondent, but it is not clear from the order sheets whether any summon was issued or not and it is served or unserved or service report is awaited. As the respondent is yet to appear before the trial Court, his presence before this Court is not required.

6. The trial Court has dismissed the complaint for want of prosecution without recording whether any summon is issued or not and whether it is served or not or service is awaited. Dismissal of complaint in absence of the complainant was not the only option before the trial Court. As per Section 256 Cr.P.C., Court can adjourn the case for some other day. Every case should be heard on merits and it should not be sent to Record Room without deciding the issues between the parties, but that is not done. Therefore, the order passed by the trial Court is not sustainable and the same deserves to be set-aside.

7. Accordingly, the petition is allowed and the order dated 7.2.2017 passed by the Judicial Magistrate First Class, Durg (CG) in Complaint case No.8975/2015 is hereby set-aside. Now the matter is remanded back to the trial Court to proceed with the case in accordance with law after providing opportunity to the petitioner for summoning the respondent.

8. The petitioner shall appear before the trial Court for further proceedings on 13th December, 2018.

Sd/

(Ram Prasanna Sharma)

Judge