

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1375 of 2018**

Shailendra Sharma, S/o Shri Indra Kumar Sharma, Aged About 57 Years, R/o F-374, Behind Popular Bakery P. S. Civil Lines, Katora Talab, District Raipur (C.G.)

---- Petitioner

Versus

Harpal Singh Jhans, S/o Shri Puran Singh Jhans, R/o A-Block, Street No. 6, Behind Popular Bakery P. S. Civil Lines, Katora Talab, District Raipur (C.G.)

---- Respondent

For Petitioner : Mr. Harshad Vyas, Advocate.

For Respondent : Mr. Ranbir Singh Marhas, Advocate.

Hon'ble Shri Justice Ram Prasanna Sharma

Order On Board

10/09/2018

1. Heard on I.A. No. 01/2018, application for condonation of delay in filing the petition.
2. For the reasons mentioned in the application, the same is allowed and delay of 197 days in filing the petition is condoned.
3. Also heard on application filed under Section 378(4) of the Code of Criminal Procedure, 1973 for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred under Section 378 (4) of the Code of Criminal Procedure, 1973 against order dated 22.09.2017 passed by learned Judicial Magistrate First Class, Raipur (C.G.) in Complaint Case No. 936/2011, wherein, the said

court dismissed the complaint filed by the appellant under section 138 of the Negotiable Instrument Act, 1881.

6. Learned counsel for the petitioner submits that the case was fixed for final argument on 01.02.2017. After recording the evidence of the parties, as per order-sheet dated 01.02.2017, argument was heard and case was fixed for judgment on 06.02.2017. On that date, the judgment was not delivered as presiding officer of the said court was on leave. Thereafter, matter was posted for argument and judgment on 08.03.2017 and it was further posted for argument and judgment on 27.04.2017, 13.06.2017 and 10.07.2017. Again, it was fixed for argument on 10.08.2017, 11.09.2017 and 18.09.2017. It was again fixed for 22.09.2017 and on that date, the said court dismissed the complaint for want of prosecution.
7. It appears that the case was heard by the trial court and it was fixed for judgment on 06.02.2017. When argument was already heard and case was fixed for judgment, there was no occasion for fixing the case again for argument of the case. Procedure adopted by the trial court is not in the fitness of the settled principle of law. When the case was finally heard, there was no requirement of the parties to appear before the court and it was the duty of the court to pronounce judgment, but the same is not done that is why order passed by the said court on 22.09.2017 dismissing the complaint for want of prosecution is not sustainable.

8. Accordingly, order passed by the trial court is set aside allowing the petition. The trial court is directed to decide the matter as per prescribed norms within a short time.
9. It is directed that the parties shall appear before the trial court on 4th October, 2018 and the trial court shall proceed further.

Sd/-
(Ram Prasanna Sharma)
Judge