

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-128 of 2018

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Date of decision:14.11.2018

M/s Ayursiddha Inc.

...Appellant

v.

M/s Global Fragrances Pvt. Ltd. and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Mr. Ashish Gupta, Advocate for the appellant.

Mr. Vishal Garg, Advocate for the respondents.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-1680-MA of 2015 granting leave to file appeal vide order passed by this Court on 23.10.2018.

I have heard learned counsel for the parties in the appeal.

This criminal appeal has been filed challenging the impugned order dated 2.7.2015 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed by M/s Ayursiddha Inc. against M/s Global Fragrances Pvt. Ltd. and Mr. Somesh Choudhary under Section 138 of the Negotiable Instruments Act, 1881, (hereinafter referred to as 'the NI Act') has been dismissed in default for want of prosecution.

It has been stated in the grounds of appeal that the impugned

order passed by the learned trial Court is not at all sustainable in the eyes of law for the simpliciter reason that the complainant/appellant was misled due to the negligence/mistakes committed by the concerned Court staff of the said Court and thus the complainant/appellant cannot be made to suffer on that account. It has been submitted that on 30.5.2015, the case was listed for appearance of the accused through bailable warrants. On the said day, it was noticed by the learned trial Court that the Ahlmad had failed to issue the said bailable warrants and, therefore, the Court re-issued bailable warrants to the accused/respondents for the next date of hearing and the matter was posted for 29.7.2015. Reference and reliance in this regard was placed upon the 'Case Status sheet' of the matter under appeal downloaded from the website of Gurgaon District Courts, which clearly mentions the next date of hearing as 29.7.2015. On 29.7.2015, when the complainant/appellant along with its counsel visited the trial Court to appear in the matter, they were aghast to know that the aforesaid matter had already been dismissed by the trial Court on 2.7.2015 itself on the ground of non-prosecution, which clearly demonstrates the negligence on the part of the concerned Court staff in mentioning the wrong date in the last order i.e. 30.5.2015. Therefore, the impugned order is liable to be quashed/set aside as the appellant and its counsel could not attend the Court due to the above fact on that day. It has been further prayed that the complaint of the appellant may be restored to its original number, in the interest of justice.

In this case, notice of motion was issued and the learned counsel for the respondents has put in appearance and contested this appeal.

The complaint was pending before the learned Judicial Magistrate Ist Class, Gurgaon, for appearance of the accused through bailable warrants and on one date for the non-appearance of the complainant, this complaint filed under Section 138 of the NI Act has been dismissed for want of prosecution vide the impugned order.

The learned counsel for the appellant argued that the appellant was appearing in this complaint case and his absence on one of the dates was not intentional. Neither the appellant-complainant nor its counsel could appear before the trial Court on 2.7.2015 due to wrong mentioning of date as 29.7.2015 on 'Case Status sheet' on the website of the Court. Learned counsel for the appellant argued that the appellant in these proceedings was regularly appearing in the Court and there was no mala fide intention for not appearing before the trial Court.

A perusal of the record also shows that, in no way, by the absence, the complainant/appellant is to be benefitted in this complaint case nor there is anything on the record to show that there was any mala fide intention on the part of the complainant/appellant for his absence from the proceedings. The complainant/appellant has given the ground in the appeal that the complainant and his counsel could not appear before the Court. There was no necessity to dismiss the complaint vide impugned order on that day. The Court has also not considered the fact that earlier the complainant was appearing in this case regularly. The absence of the complainant on one date in the complaint case is no ground to dismiss the complaint.

In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, has caused miscarriage of justice. If this order is not set aside, the complainant/appellant will suffer irreparable loss. It is settled law that the rights of the parties should be decided on merit as far as possible. The Court should do substantial justice between the parties and should not go into the technicalities of the law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complaint is set aside.

This complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law after giving notice to the parties concerned.

The parties are directed to appear before the trial Court on 11.12.2018.

November 14, 2018.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No