

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-50 of 2018

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Date of decision:10.7.2018

M/s Eastman Auto & Power Ltd.

...Appellant

v.

M/s City Car Centre and another

...Respondents

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Puja Chopra, Advocate for the appellant.

Mr. Gursimran Singh, Advocate for the respondents.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc. No.A-729-MA of 2013 granting leave to file appeal vide order dated 6.7.2018 by this Court.

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

This criminal appeal has been filed against the impugned order dated 17.7.2012 passed by learned Judicial Magistrate Ist Class, Gurgaon, vide which the complaint filed by M/s Eastman Auto & Power Ltd. through Nitin Arora-authorized representative against M/s City Car Centre through M.K. Singh, Proprietor and another under Section 138 along with Section 142 of the Negotiable Instruments Act, 1881, as amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws

(Amendment) Act, 2002 (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 on 5.6.2012 application for exemption from personal appearance of the complainant was filed and the same was allowed. The accused was not present on that day and, therefore, he was ordered to be summoned throughailable warrants for 17.7.2012. On 17.7.2012, the complainant had informed his counsel in advance that he would not be available on the said day as he had to go out of station in lieu of some official work and, therefore, he would not be able to be present before the learned trial Court on 17.7.2012. The complainant had further instructed his counsel to take appropriate steps and move an application for exemption of his personal appearance. But the counsel for the complainant himself did not appear on 17.7.2012 and the case was ordered to be dismissed in default on account of non-appearance of the complainant as well as his counsel. The complainant had been pursuing the said complaint for almost 3½ years in most diligent manner. But on 17.7.2012 due to the difficulty of the complainant he could not appear and his counsel also did not put in appearance. It has been prayed that as the absence of the complainant was not intentional, hence the impugned order is liable to be quashed and 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, but the complainant could not appear only on one date due to his personal difficulty which he had duly informed to his counsel, but his counsel also did not appear and the complaint filed under Section 138 read with Section 142 of the NI Act had 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 regularly, but could not appear only on one date, therefore, his absence on the date was not intentional. Neither the appellant-complainant nor his counsel could appear before the trial Court on 17.7.2012 due to the fact that the complainant had to go out of station due to some personal difficulty. 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 on one date. 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 this date in the complaint case is no ground to dismiss the complaint.

[4]

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 for non-prosecution 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 31.7.2018.

July 10, 2018.

(Inderjit Singh)
Judge

hsp

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