

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A No.1849-MA of 2016

Date of decision: 07.02.2018

Jagdish Chander

....Applicant/Appellant

Versus

Ajeet Kumar

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Atul Yadav, Advocate for the applicant/appellant.

Mr. Sandeep Verma, Advocate for the respondent.

ARVIND SINGH SANGWAN J. (Oral)

This appeal has been filed challenging the order dated 29.08.2016 passed by the trial Court vide which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act was dismissed.

Counsel for the applicant/appellant has submitted that the applicant was appearing on each and every date of hearing and on a single default of his non-appearance on account of noting a wrong date, the case was dismissed for non-prosecution. It is further submitted that on 29.08.2016 when the impugned order was passed, the case was fixed for procuring the presence of the accused as well as the surety through arrest warrants as the accused persons also absented on a previous date and, therefore, no substantive proceedings like recording of the evidence, took place on that day.

Counsel for the respondent has raised no serious objection if the appeal is restored except that the appellant be directed to pay some costs.

Since, it is well settled principle of law that no one should be condemned unheard and also in view of the fact that the case was fixed for appearance of the accused, the appellant has shown a *bona fide* ground that he was appearing on each and every of hearing and for a single default i.e. on account of noting a wrong date, the trial Court should not have dismissed the case on account of non-appearance of the appellant.

In view of the above, the impugned order dated 29.08.2016 is set-aside and the matter is remanded back to the trial Court for further proceedings subject to payment of costs of Rs.2,500/- to be deposited with the District Legal Services Authority, Rewari.

The parties through their counsel are directed to appear before the trial Court on 26.02.2018.

(ARVIND SINGH SANGWAN)
JUDGE

07.02.2018
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Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No