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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.A. 227/2018**

ASHOK KUMAR DHIMAN Appellant
Through: Mr. K.S. Sharma, Adv.
versus

STATE (NCT OF DELHI) & ORS Respondents
Through: Mr. Izhar Ahmad, APP for State.
Ms. Neha Garg, Adv. for R-2 with R-
2 in person.

CORAM:
HON'BLE MR. JUSTICE A.K. PATHAK

ORDER
% **11.12.2018**

Appellant is aggrieved by the order dated 24.08.2016 whereby complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, the Act), filed by the petitioner against the respondent no.2, has been dismissed for non prosecution and respondent no.2 has been acquitted.

Learned counsel for the appellant submits that non-appearance of appellant was neither intentional nor wilful. It is contended that appellant failed to appear in court on 06.08.2016 as he had gone to his native place to take care of his old and aged parents. Thereafter, he did not receive any intimation from the counsel regarding next date of hearing. When appellant contacted the counsel he was informed that matter was listed on 24.10.2016. Accordingly, appellant appeared in court on 24.10.2016 where he came to

know that matter was not listed on that day. On enquiry, appellant came to know that the case had already been dismissed in default on 24.08.2016. In the grounds of appeal, it is stated that non appearance on 24.08.2016 was on account of wrong noting of next date of hearing by the counsel for the appellant.

The plea taken by the appellant is a possible plea. Appellant had been diligently pursuing his complaint as he participated in the proceedings, inasmuch as, led his evidence. Statement of accused (respondent no.2) under Section 313 Cr.P.C. was also recorded. It is only at the stage of defence evidence when he remained unrepresented on three consecutive dates. The plea has been taken that appellant had gone to his native place and also that his counsel had noted wrong next date of hearing as 24.10.2016 instead of 24.08.2016 which is a probable plea. Appellant was nothing to gain by his non-appearance. As regards delay is concerned, respondent no.2 can be compensated in terms of cost. It is trite law that endeavour has to be made to dispose of the case on merits instead of dismissing the same on technicalities.

For the foregoing reasons, impugned order is set aside and complaint is resorted at its original number, however, subject to costs of ₹20,000/- to

be paid by the appellant to respondent no. 2 on the next date of hearing before the trial court. Appellant and respondent no.2 shall appear before the concerned trial court on 07.01.2019. On payment of costs by the appellant to the respondent no.2, trial court shall proceed further with the matter in accordance with law.

Appeal is disposed of in the above terms.

A.K. PATHAK, J.

DECEMBER 11, 2018

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