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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.L.P. 615/2018

HT MEDIA LTD.

..... Petitioner

Through: Mr. Gautam Dass, Advocate.

Versus

STATE & OTHERS

..... Respondents

Through: Mr. Amit Chadha, APP for State.
Mr. Vivek Vidyarthi and Mr.
Sarvagya Vidhyarthi, Advocates for
R-4.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER

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10.10.2018

The learned counsel for the respondent submits that this petition has been filed without authority, since the Power of Attorney shows that the authority in favour of Mr. Biplab Majumdar was only till 31.03.2018 and this petition has been filed thereafter.

The petitioner impugns the order dated 03.08.2018 dismissing his complaint case under section 138 of Negotiable Instruments Act, 1881 on account of non-prosecution. Although, the impugned order notes that a proxy counsel was available on behalf of the complainant but the Trial Court found it odd that neither the Authorized Representative nor the main counsel was available before it. Earlier during those proceedings, an adjournment was granted to the petitioner, subject to cost of Rs. 2000/-. The said cost had not been paid and the complainant had not appeared, despite the case being fixed for cross-examination of a witness. The Trial Court was of the opinion that the complainant had lost interest in prosecuting the case. Hence

the impugned order.

It is the petitioner's case that non-appearance of the learned counsel for the petitioner was not deliberate; that he could not appear when the case was called out but had ensured that there was due representation before the Court through a proxy counsel. The occasional inability of a regular counsel to appear before the Court, when the matter was called out, is understandable because he could well be engaged in some other Court simultaneously. In the present case, there was a representation for the petitioner by the proxy counsel, seeking adjournment. It, therefore, cannot be said that the petitioner was not duly represented on the said date. Apropos the non-payment of costs of Rs.2,000/-, the learned counsel for the petitioner submits that this was not deliberate and the petitioner is apologetic about the same. He offers to pay the said costs alongwith further costs of Rs. 10,000/- to the respondent. Apropos the earlier non-prosecution, the petitioner shall pay a cost of Rs. 25,000/- to the Delhi High Court Lawyers Welfare Trust.

In view of the above, the leave petition is allowed and the impugned order is set aside. The Complaint Case is restored to its original number and seniority.

The parties shall appear before the Trial Court for further proceedings on 16.11.2018.

NAJMI WAZIRI, J

OCTOBER 10, 2018

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