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

+ **CRL.M.C. 2573/2015**

PREM KUMAR

..... Petitioner

Through: Mr. Ujas Kumar, Adv. with petitioner
in person.

versus

M C GUPTA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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10.09.2018

The petitioner is facing prosecution in criminal case (No. 2805/1/2007) in the court of Metropolitan Magistrate on the complaint of the respondent on the accusations of he having committed offence punishable under Section 138 of the Negotiable Instruments Act, 1881. He is aggrieved by the impugned order dated 12.05.2015 of the Metropolitan Magistrate and of the court of Sessions in revision petition (No. 15/2/2015) dated 29.05.2015 whereby his right to lead defence evidence had been closed. The petition at hand invoking Section 482 of the Code of Criminal Procedure, 1973 (Cr.P.C.) was entertained and notice was issued to the respondent by order dated 30.06.2015 whereby the proceedings in the said criminal case were stayed. The said order staying the proceedings has continued to be operative till date.

There is no appearance on behalf of the respondent till date. The

notice sent to him on 23.03.2017 for 18.04.2017 was returned with endorsement under his signatures to the effect that he (the complainant) generally keeps unwell and, therefore, is unable to prosecute it further. Similarly, on the notice sent to him for 24.10.2017, the respondent made an endorsement under the signatures on 29.04.2017 reiterating that on account of ill-health, he was unable to appear in court adding that he has no claim against the petitioner.

It is clear that the respondent has due notice of the present petition. His endorsements on the notices sent to him only reflect that possibly on account of delay, ill-health or interim orders staying the proceedings in the criminal case, he feels exasperated and thus, rendering him dis-inclined to continue with the prosecution. Whether to continue with the prosecution of the criminal case or not is his prerogative on which an appropriate call will have to be taken by the concerned criminal court, the only issue requiring to be addressed by this court, at this stage, is as to whether the petitioner is entitled to renewed opportunity for defence evidence or not.

Since from the above, it is clear that the respondent has due notice of the present petition, he having failed to appear to assist, the matter is being decided on the basis on submissions made by the learned counsel for the petitioner (the accused) and the available record.

It appears that the criminal case relates to non-payment despite demand in the wake of dishonour of the cheque for Rs.1,00,000/-. The prosecution was launched in the year 2007. The trial had commenced with notice under Section 251 of Cr. P.C. being issued and served on 11.11.2011. It continues till date, the petitioner apparently being responsible for the

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delay. This is demonstrated by the fact that his right to lead evidence had been earlier closed by the Metropolitan Magistrate by order dated 04.08.2014. The said order was challenged by the criminal revision (no. 208/2/14) which was granted by the court of Sessions by order dated 31.03.2015. A copy of the said order would show that the petitioner was given one additional opportunity to lead defence evidence for which he was to pay costs of Rs.8,000/- and take necessary steps for service of the witnesses on the “next date of hearing” fixed before the trial court.

It appears from the submissions of the counsel that the date next fixed before the trial court was 06.04.2015. A copy of the order dated 06.04.2015 shows that the petitioner did not even appear before the trial court on the said date. The Magistrate nonetheless adjourned the matter in due deference to the order of the revisional court fixing it for the defence evidence to be adduced on 11.05.2015. It is, however, pointed out that on 11.05.2015, the presiding Magistrate was on leave of absence, so no effective proceedings could take place. By virtue of the order of the link Magistrate, the case came up before the concerned court on 12.05.2015 when taking note of the continued default, the right was again closed. This view has been endorsed by the revisional court by the impugned order.

Given the above chronology of the events, while there can be no denial of the fact that the petitioner has been guilty of delay, in the interest of justice, one last opportunity deserves to be granted, subject to the following conditions:

1. The petitioner will pay costs of Rs.10,000/-, which would be payable over and above the costs imposed upon him earlier, to the respondent

(complainant) by way of demand draft tendering it through the trial court on the date fixed in the matter tomorrow which is stated to be the next date of hearing earlier given. In case the complainant on account of his dis-interest as indicated above does not appear, the trial court shall keep the said demand draft payable to the complainant on its record and handover on the appearance of the complainant for which court notice shall be issued.

2. Subject to compliance with the above, the trial court will fix a date of hearing on which the petitioner will produce his defence evidence *i.e.* the official from the office of Registrar of Companies, and also present himself as his own witness – subject to he seeking prior approval of the trial court under Section 315 of Cr. P.C., they being the only two witnesses in defence sought to be examined.

3. The petitioner will be obliged to take requisite steps well in time and ensure service of the summons on the witness who is required to be called through the court process by taking it *dasti*.

4. No further adjournment on any ground for defence evidence shall be entertained.

In case of any further default on the part of the petitioner, the right to lead defence evidence would stand closed by virtue of this order. The trial court while issuing court notice to the complainant (if he doesn't appear) shall also send a copy of this order for it to be served on him.

The petition is disposed of in above terms.

Dasti under the signature of Court Master.

R.K.GAUBA, J.

SEPTEMBER 10, 2018/uj
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