

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRMP No. 1342 of 2018**

M/s Gagan Home Solution, Through: Gagandeep Arora, Age about- 26 years, R/o – Magarpara, Police Station – Civil Line, District – Bilaspur (C.G.)

---- Petitioner

Zafar Ali, S/o – Sayeed Abrar Ali, Age about – 48 years, R/o – Flat No. 203, Second Floor, D/1, D Block, Shree Ram Towers, Tarbahar, District – Bilaspur (C.G.)

---- Respondent

For the petitioner : Mr. K.P.S. Gandhi, Advocate

For the respondent : Mr. Shailesh Puriya, Advocate

Hon'ble Shri Justice Ram Prasanna Sharma

Order on Board**08.05.2019.**

1. Heard on I.A No.1/2018, application for condonation of delay in filing the instant petition.
2. On due consideration, the application is allowed and the delay of 242 days in filing the petition is hereby condoned.
3. Also, heard on application under Section 378(4) of CrMP for grant of leave to appeal.
4. On due consideration, leave is granted.
5. This petition is preferred against the order dated 5th September, 2017 passed by Judicial Magistrate First Class, Bilaspur (C.G.), in Complaint Case No. 890/2014, wherein the said Court dismissed the case for want of prosecution filed under Section 138 of the Negotiable Instruments Act, 1881.

6. It appears from the order-sheet of the trial Court that the witnesses of the appellant/complainant were completed, thereafter, statement of the respondent/accused was recorded under Section 313 of the Code of Criminal Procedure, 1973 on 7th January, 2017 and since then the case was fixed for defence witnesses of the respondent. The case is at the verge of completion of trial. A number of adjournment have been given for defence witnesses, but no one examined and no list of defence witnesses were submitted before the trial Court. The case was fixed for recording statement of defence witnesses, but the trial Court dismissed the complaint for want of prosecution.

7. In the matter of **Associated Cement Co. Ltd. Vs. Keshvanand** reported in **(1998) 1 SCC 687**, Hon'ble the Apex Court held as under:-

“18. Reading the Section in its entirety would reveal that two constraints are imposed on the court for exercising the power under the Section. First is, if the court thinks that in a situation it is proper to adjourn the hearing then the Magistrate shall not acquit the accused. Second is, when the Magistrate considers that personal attendance of the complainant is not necessary on that day the Magistrate has the power to dispense with his attendance and proceed with the case. When the Court notices that the complainant is absent on a particular day the court must consider whether personal attendance of the complainant is essential on that day for progress of the case and also whether the situation does not justify the case being adjourned to another date due to any other reason. If the situation does not justify the case being adjourned the Court is free to dismiss the complaint and acquit the accused. But if the presence of the complainant on that day was quite unnecessary then resorting to the step of axing down the complaint may not be a proper exercise of the power envisaged in the section. The discretion must, therefore be exercised judicially and fairly without impairing the cause of administration of criminal justice.”

Again, in the matter of **Mohd. Azeem Vs. A. Venkatesh & another** reported in **(2002) 7 SCC 726**, Hon'ble the Apex Court held that in a proceeding under the Act, 1881, the single default in appearance on the part of the complainant, the dismissal of the complaint case is not proper, legal and justified.

8. Dismissal of the complaint case was not the only option before the trial Court. The trial Court could have adjourned the case to some other date as per the provisions of Section 256(1) CrPC. If defence side is not able to produce witnesses. The trial Court may have closed defence side and should have decided the issues between the parties, but that is not done in the present case and the record sent to record room without deciding the issues between the parties, therefore, the order passed by the trial Court is set aside.

9. Trial Court is directed to proceed the case after hearing both side and decide the same on merit.

10. Both sides shall appear before the trial Court for further proceedings on 26th June, 2019.

Sd/-

(Ram Prasanna Sharma)
JUDGE