

CRA-AS-2-2018

Date of decision: March 28, 2019

Bharat Singh Gauri

....Appellant

Versus

Kuldeep

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWANPresent Mr. G.C. Shahpuri, Advocate
for the appellant.

None for the respondent.

ARVIND SINGH SANGWAN J.

As per the office report, the respondent was served for 25.4.2018. However, no one has appeared on his behalf.

Prayer in this appeal is for setting aside the order dated 28.11.2016 passed by the Judicial Magistrate 1st Class, Yamuna Nagar at Jagadhri vide which the complaint filed by the appellant was dismissed for non-prosecution.

While issuing notice of motion on 18.12.2017, it was observed that the complaint under Section 138 of the Negotiable Instruments Act was filed and was pursued continuously by the appellant. However, the respondent-accused was not appearing and, therefore, the trial Court issued warrants of arrest for procuring the presence of the respondent for 27.9.2016 and, thereafter, on the next date, vide impugned order dated 28.11.2016, the complaint was dismissed for want of prosecution.

Counsel for the appellant submits that on the date when the case was dismissed for non-prosecution, it was fixed for procuring the presence

of respondent-accused by way of warrants of arrest and, therefore, no effective proceedings was to take place on that date and thereafter, even if the appellant/complainant or his counsel were not present in the Court, the trial Court was not required to take such a harsh view dismissing the complaint on account of non-appearance the appellant or his counsel and should have been granted one opportunity by way of issuing a notice to complainant.

In view of the above, this appeal is allowed and the impugned order dated 28.11.2016 is set aside.

The trial Court is directed to restore the complaint to its original number. The parties are directed to remain present before the trial Court on 30.4.2019.

Disposed off.

March 28, 2019
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(ARVIND SINGH SANGWAN)
JUDGE

Whether speaking/reasoned : Yes / No

Whether reportable : Yes / No