

In the High Court of Punjab and Haryana at Chandigarh

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Criminal Appeal No.AS-15 of 2017

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Date of decision:14.05.2019

Rakesh Kumar

...Appellant

v.

Harish Kumar

...Respondent

....

Coram: Hon'ble Mr. Justice Inderjit Singh

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Present: Ms. Jaspreet Kaur, Advocate for Mr. Ashish Yadav, Advocate
for the appellant.

Mr. Yogesh Saini, Advocate for the respondent.

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Inderjit Singh, J.

This appeal has arisen out of the acceptance of Criminal Misc.
No.A-441-MA of 2015 granting leave to file appeal vide order dated
6.2.2017 passed by this Court.

I have heard learned counsel for the parties in the appeal.

This criminal appeal has been filed against the impugned order
dated 15.4.2014 passed by learned Judicial Magistrate Ist Class, Gurgaon,
vide which the complaint filed by Rakesh Kumar against Harish Kumar
under Section 138/142 of the Negotiable Instruments Act, 1881 (hereinafter
referred to as 'the NI Act') has been dismissed in default for non-appearance
of the complainant.

It has been stated in the grounds of appeal that on 10.02.2014, the appellant attended the Court and duly marked his presence through his counsel and the matter was further adjourned for 15.4.2014. However, due to an inadvertent mistake, the appellant noted the next date as 15.5.2014 instead of 15.4.2014. On that account, the appellant was unable to attend the learned trial Court on 15.4.2014. When on 15.5.2014, the appellant came before the trial Court, it was revealed that his case has already been dismissed in default for non prosecution on 15.4.2014. It has been mentioned that the appellant has been appearing on each date but due to the above fact, he could not appear before the learned trial Court and his complaint has been dismissed. It has been prayed that the complaint of the appellant may be restored to its original number, in the interest of justice.

In this case, notice of motion was issued and the learned counsel for the respondent has put in appearance and contested this appeal.

The complaint was pending before the learned Judicial Magistrate Ist Class, Gurgaon, but neither the appellant/complainant nor his counsel appeared before the trial Court on the date fixed due to the above fact and the complaint filed under Section 138 of the NI Act has been dismissed for want of prosecution vide the impugned order.

The learned counsel for the appellant argued that the appellant was appearing in this complaint on each and every date, but due to wrong noting of date, he could not appear before the trial Court. Learned counsel for the appellant argued that the appellant in these proceedings was regularly appearing in the Court and there was no mala fide intention for not appearing before the trial Court. A perusal of the record also shows that, in

no way, by the absence, the complainant/appellant is to be benefitted in this complaint case nor there is anything on the record to show that there was any mala fide intention on the part of the complainant/appellant for his absence from the proceedings. The complainant/appellant has given the ground in the appeal that the complainant and his counsel could not appear before the Court. There was no necessity to dismiss the complaint vide impugned order on that day. The Court has also not considered the fact that earlier the complainant was appearing in this case regularly. The absence of the complainant on this date in the complaint case is no ground to dismiss the complaint.

In the facts and circumstances of the present case, I find that the impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, has caused miscarriage of justice. If this order is not set aside, the complainant/appellant will suffer irreparable loss. It is settled law that the rights of the parties should be decided on merit as far as possible. The Court should do substantial justice between the parties and should not go into the technicalities of the law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by the learned Judicial Magistrate Ist Class, Gurgaon, dismissing the complaint is set aside.

This complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The trial Court is directed to proceed further as per law after giving notice to the parties concerned.

[4]

The parties are directed to appear before the trial Court on
17.7.2019.

May 14, 2019.

(Inderjit Singh)
Judge

hsp

NOTE:	Whether speaking/reasoned:	Yes
	Whether reportable:	No