

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRA-AS-59-2019(O&M)

Date of decision: 07.12.2019

Vikas Kumar Choudhary

.....Appellant

Versus

Sh.Dixit Goel

.....Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present:- Mr.Sanjiv Gupta, Advocate for the appellant

Mr. Shiv Kumar, Advocate for respondent

ANIL KSHETARPAL, J. (ORAL)

Criminal complaint filed under Section 138 of the Negotiable Instruments Act, 1881 was dismissed for non-prosecution on 12.12.2017. Correctness thereof has been assailed in the present special leave to appeal.

Learned counsel for the appellant submits that appellant could not appear before the Court on 12.12.2017 as he had noted a wrong date. He submits that complainant had instituted the complaint on 1.3.2016 and had been regularly appearing except on 15.11.2017 and 12.12.2017. He submitted that the Court ought to have granted adjournment as the counsel representing the appellant was also not present.

On the other hand, learned counsel for the respondent has submitted that respondent is a handicapped person and he is being harassed.

Be that as it may, the Courts must always make a sincere endeavour to decide the case on merits rather than on small defaults or irregularities. Complaint remained pending for more than 1 ½ year. No

doubt complainant-appellant was not present on 15.11.2017 as also on 12.12.2017 when the impugned order was passed, however, the Court could atleast make an attempt to either requisition the attendance of the counsel who was local or send intimation to the appellant. Dismissal of complaint under Section 138 of the Negotiable Instruments Act in default results in closure of remedy.

Keeping in view the aforesaid facts, the present appeal is allowed. The order dated 12.12.2017 is set aside. The Judicial Magistrate First Class is requested to re-decide the criminal complaint after granting appropriate opportunity to the parties to lead their evidence. Parties through their counsel are directed to appear before the Judicial Magistrate on 6.1.2020.

07.12.2019

rekha

Whether speaking/reasoned

Whether Reportable

(ANIL KSHETARPAL)**JUDGE**

Yes / No

Yes / No