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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Date of decision-11.07.2019

1. CRM-A-844-MA-2013 (O&M)

M/S Shiva Build Tech.(P) Ltd.

...Applicant

Vs.

Totem Infrastructure Ltd. and others

...Respondents

2. CRM-A-781-MA-2013 (O&M)

M/S Shiva Build Tech.(P) Ltd.

...Applicant

Vs.

Totem Infrastructure Ltd. and others

...Respondents

3. CRM-A-730-MA-2013 (O&M)

M/S Shiva Build Tech.(P) Ltd.

...Applicant

Vs.

Totem Infrastructure Ltd. and others

...Respondents

CORAM:- HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Jagjot Singh, Advocate for
Mr. Kunal Dawar, Advocate for the applicant.

MANOJ BAJAJ, J.

CRM-43138-2013

Application is allowed as prayed for.

For the reasons mentioned in the application, delay of 27 days
in filing the application under Section 378(4) Cr.P.C. for leave to appeal is
condoned.

Main case

All the above mentioned cases between the same parties were dismissed on the same date for non-prosecution as these were being tried together by the trial Court, therefore, these petitions are being decided by this common order.

The facts in brief are being extracted from CRM-A-844-MA-2013.

M/S Shiva Build Tech.(P) Ltd.-applicant had preferred this application for leave to appeal to challenge the order dated 24.07.2013 passed by the learned Judicial Magistrate First Class, Gurgaon whereby the complaint under Sections 138 and 142 Negotiable Instruments Act, 1881 was dismissed for want of prosecution.

The case was pending before trial Court for appearance of the accused, however, no one had appeared. On 24.07.2013, the following order was passed by the trial Court:-

“Case called several time but none has appeared on behalf of the complainant, it is already 12.30 p.m.. Further wait is not justified. It seems that present complainant is not interested for pursuing the present complaint. The present complaint is hereby dismissed for want of prosecution. File be consigned to the record room after due compliance.”

Learned counsel appearing on behalf of the applicant contends that inadvertently a wrong date i.e. 27.07.2013 was noticed instead of 24.07.2013 as fixed by the trial Court. He has placed on record photocopies

of his counsel's diary in support of this ground as Annexure A-1 and A-2. Learned counsel further contends that the absence on the given date was *bona fide* and the Court has proceeded to pass the extreme order of dismissal of the complaint. He further submits that the absence of the applicant on 24.07.2013 was neither willful nor intentional.

The impugned order strictly does not amount to acquittal and, therefore, on the oral request of the applicant, the application is treated under Section 482 Cr.P.C.

At this stage, it may not be necessary to issue notice to the accused, as it may cause burden upon him to contest this application for leave to appeal, wherein the prayer is for restoration of the complaints.

This Court finds that the explanation offered for the absence of applicant is reasonable and accepted. It is to be borne in mind that many a times the complainant or counsel can be prevented by sufficient reasons on a given date from putting in appearance before the Court and every such absence necessarily cannot be construed as deliberate or wilful.

Considering the above, the impugned order dated 24.07.2013 is set aside and the complaints are restored to its original numbers, and the trial Court is directed to proceed with the complaints in accordance with law.

Let the parties appear before the trial Court on 07.08.2019.

All petitions disposed off.

(MANOJ BAJAJ)
JUDGE

11.07.2019

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Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No