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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CRM-A-757-MA of 2017 (O&M)

Date of decision: May 27, 2019

Sarjeet

.....Applicant-appellant

Versus

Akbar

.....Respondent

CORAM: HON'BLE MR. JUSTICE MAHABIR SINGH SINDHU

Present: Mr. Surinder K. Daaria, Advocate
for the applicant-appellant.

None for the respondent.

MAHABIR SINGH SINDHU, J (Oral)

CRM No.13200 of 2017

None appears on behalf of the respondent, despite service.

Heard learned counsel for the applicant-appellant.

Application is allowed for the reasons stated therein. Delay
of 84 days in filing the application for leave to appeal, is condoned.

CRM-A-757-MA of 2017

Heard learned counsel for the applicant-appellant.

Application for grant of leave to appeal against the order of
dismissal of the complaint, is allowed.

Registry is directed to register and assign number to the
appeal.

At the oral request of learned counsel for the applicant-

appellant, the same is taken up for hearing today itself.

MAIN APPEAL

Present appeal has been filed against the impugned order dated 01.12.2016 passed by learned Judicial Magistrate Ist Class, Gurgaon (for short 'JMIC, Gurgaon'), whereby complaint of the appellant-complainant, under Sections 138/141 of the Negotiable Instruments Act, 1881 (for short 'NI Act'), was dismissed for non-prosecution.

It is contended by learned counsel for the appellant that non-appearance of the appellant-complainant on the date of passing the impugned order was not intentional; rather beyond his control as a wrong date was noted by the counsel representing him before learned trial Court and thus, there was a mis-communication between the appellant as well as his counsel. Further contends that even otherwise, the complaint was under Section 138 of the Act, therefore, the appellant was not going to gain anything by delaying the proceedings before learned trial Court.

Heard learned counsel for the appellant and perused the paper book.

Since notice of the application for condonation of delay was issued, but despite service, none has chosen to appear on behalf of the respondent; therefore, this Court is of the opinion that other side is not coming forward to oppose the present case and has thus, decided to proceed in the matter without issuing any formal notice in the main appeal.

Record reveals that complaint was filed under Section 138 of the NI Act, but the same was dismissed by learned JMIC, Gurgaon for non-prosecution while passing impugned order dated 01.12.2016 on account of the single default of the appellant-complainant. Even otherwise, it is specifically pleaded in the grounds supported by affidavit and argued that non-appearance of the appellant on 01.12.2016 was not intentional; rather due to communication gap while conveying a wrong date by his counsel representing before learned trial Court. Moreover, rightly contended that by delaying the proceedings, the appellant was not going to be benefited in any manner being a cheque bounce case.

In view of the above, the present appeal is allowed and impugned order dated 01.12.2016 passed by learned JMIC, Gurgaon, is set aside. Copy of this order be sent to respondent for information.

Learned trial Court is requested to proceed in the matter expeditiously in accordance with law.

It is clarified that since this order has been passed without issuing notice to the opposite side, hence, if the respondent feels aggrieved, he may move an application for recalling of the same.

(MAHABIR SINGH SINDHU)
JUDGE

May 27, 2019
mahavir

Whether speaking/ reasoned: **Yes**
Whether Reportable: **Yes**