

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CRM-M No.15629 of 2017

Date of Decision: May 27, 2019

Satpal		Petitioner
	versus	
Harish Kumar		Respondent

CORAM: HON'BLE MR.JUSTICE RAMENDRA JAIN.

Present: Mr. J.P. Jangu, Advocate for the petitioner.

None for the respondent.

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RAMENDRA JAIN , J . (Oral)

Present petition has been filed seeking to set aside the order dated 26.10.2016 (Annexure P-5) passed by Judicial Magistrate Ist Class, Gurgaon, whereby the complaint under Sections 138/141 read with section 142 of the Negotiable Instruments Act, 1881 (for short, 'Act'), filed by the petitioner was dismissed in default, on account of his non-appearance.

In nutshell, the petitioner filed a complaint against respondent under Sections 138 and 142 of the Act and was regularly appearing on each and every date. However, applicant absented on 26.10.2016. Consequently, his complaint was dismissed by the trial Court on his single default of non-appearance. The punishment of dismissal of complaint awarded to the petitioner is dis-proportionate to the act of petitioner of non-appearance on a single date. The petitioner would suffer an irreparable loss, if, impugned order dated 26.10.2016 dismissing the complaint of the petitioner is not set aside. The instant petition has been filed, in view of the fact that the Magistrate, has no power to review his own order of dismissal of the complaint.

None has put in appearance on behalf of the respondent. However, Mr. Satbir Gil, Advocate had put in appearance on behalf of the respondent on 24.10.2017.

Heard.

After giving anxious consideration to the submissions made by learned counsel for the petitioner, this Court is of the considered opinion that nobody should be condemned unheard. Duty of the Courts is to impart justice to the litigants and not to non-suit them on technical grounds. In the instant case, only on a single default of the petitioner or his counsel, his complaint was dismissed vide impugned order, which is a very harsh step taken by the trial Court.

In view of the discussion made above, impugned order dated 26.10.2016, is set aside, subject to costs of ₹10,000/- to be deposited with the District Legal Services Authority, Gurgaon, failing which the instant petition, shall be deemed to have been dismissed.

The parties are directed to appear before the trial Court on 25.07.2019. The trial Court is directed to proceed further with complaint of the petitioner, in accordance with law, by restoring the same to its original number.

The instant petition, stands disposed of, accordingly.

Copy of this order be sent to concerned Judicial Magistrate for information and necessary action.

(RAMENDRA JAIN)
JUDGE

27.05.2019
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Whether speaking/reasoned : Yes/No
Whether Reportable : Yes/No