

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRA-AS-132-2019
(arising out of CRM-A-2061-MA-2017)
Date of decision: 03.04.2019

Satnam Kaur

... Appellant

Vs.

Amandeep

... Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Naveen Bawa, Advocate
for the appellant.

Mr. Aalok Jagga, Advocate
for the respondent.

ARVIND SINGH SANGWAN, J. (ORAL)

CRM-A-2061-MA-2017

Prayer in this application is for grant of leave to appeal against the order dated 28.07.2017 passed by the trial Court, vide which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881, was dismissed for non-prosecution.

For the reasons stated in the application, same is allowed and leave to appeal is granted.

On the directions of this Court, the registry has assigned appeal number i.e. CRA-AS-132-2019 to the present case.

CRA-AS-132-2019

Brief facts of the case are that the appellant was having good family relations with the respondent and being the family relations, the respondent approached the appellant for friendly loan and the appellant gave him Rs.5.00 lacs on 03.01.2013 for his personal need. Thereafter, in order to discharge his legal liability, the respondent issued a cheque bearing No.172094 dated 24.04.2015 amounting to Rs.5.00 lacs drawn on Axis Bank, Ludhiana, in favour of the appellant. On presentation, the said cheque was dishonoured with the remarks "Account Closed" and the same was intimated by the Bank to the appellant vide memo dated 29.04.2015. Thereafter, a notice dated 05.05.2015 was served upon the respondent but he failed to pay the cheque amount and the appellant had filed the aforesaid complaint under Section 138 of N.I. Act against the respondent.

Learned counsel for the appellant submits that on 09.05.2017, when the case was fixed for defence evidence and arguments, no defence witness was present and thereafter, it was adjourned to 30.05.2017. Again, it was adjourned for 14.07.2017, however, the appellant and her counsel noted a wrong date as 14.08.2017 and on 14.07.2017, none appeared on behalf of the parties and the case was again adjourned for 28.07.2017. Thereafter, on 28.07.2017, when none appeared on behalf of the appellant, the case was dismissed for non-prosecution. It is further submitted that the complaint is pending since 2015 before the trial Court and the appellant was appearing regularly on each and every date and had concluded her evidence, as it is apparent that the case was fixed for defence evidence, when it was dismissed

for non-prosecution.

Learned counsel for the appellant has submitted that the trial Court has taken a very harsh view in dismissing the complaint for non-prosecution, without issuing a notice to the appellant, considering the fact that on previous dates, the appellant and her counsel were regularly appearing.

Learned counsel for the respondent could not dispute the factual position that the case was fixed for defence evidence, when it was dismissed for non-prosecution.

After hearing learned counsel for the parties, I find merit in the present appeal.

Considering the fact that the case was at the fag end, when it was dismissed for non-prosecution, I find that the appellant has a bonafide ground for non-appearance before the trial Court, as it is stated by her that her counsel has noted the wrong date and therefore, they could not appear before the trial Court.

In view of the above, this appeal is allowed and the impugned order dated 28.07.2017 passed by the trial Court is set aside. The trial Court is directed to restore the complaint and proceed further in accordance with law.

The parties are directed to appear before the trial Court on 06.05.2019.

[ARVIND SINGH SANGWAN]
JUDGE

03.04.2019
vishnu

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No