

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

**CRA-AS No.151 of 2019 (O&M) (arising out of
CRM-A No.965-MA of 2017)**

Date of decision: 08.05.2019

Ajay Panu

....Appellant

Versus

Ishwar Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE ARVIND SINGH SANGWAN

Present: Mr. Bhawesh Chaudhary, Advocate
for the applicant/appellant.

ARVIND SINGH SANGWAN J.

CRA-AS No.151 of 2019 (O&M)

Leave to appeal granted.

Prayer in this appeal is for setting-aside the order dated 23.02.2015 vide which the complaint filed by the appellant was dismissed for non-prosecution on account of non-appearance of the complainant/appellant.

Brief facts of the case are that the appellant has filed a complaint under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the N.I. Act') on account of dishonouring of a cheque of Rs.60,000/- issued by the respondent.

The complaint was filed in the year 2012 and the appellant was pursuing the same by appearing on each and every date. On 13.01.2015, the case was fixed for complainant's evidence and the same was adjourned to 23.02.2015. The appellant, however, inadvertently

noted a wrong date as '23.03.2015' instead of '23.02.2015' and even the counsel for the appellant has noted the same date on his diary as well as on the case file and therefore, on 23.02.2015, nobody could appear on behalf of the complainant before the trial Court when the case was called out and the same was dismissed for non-prosecution.

The appellant, thereafter, moved an application for restoration of the complaint before the trial Court, however, the same was withdrawn on 03.03.2017 as it was not maintainable and thereafter, the present appeal was filed along with the application for condoning the delay of 733 days, which was condoned by this Court vide order dated 08.01.2019.

The respondent was duly served for 12.03.2018, however, no one has appeared on behalf of the respondent and even today, there is no representation on behalf of the respondent.

Counsel for the appellant has argued that perusal of the impugned order dated 23.02.2015 show that even no one has appeared for the accused on 23.02.2015, as well and the case, on that day, was fixed for compromise between the parties and the very fact that none of the parties has appeared on that day, show that in fact, the date was wrongly noted as '23.03.2015' and, therefore, there was a *bona fide* reason for the counsel for the appellant as well as the appellant that they could not appear on that date. Counsel for the appellant has further argued that the trial Court has taken a very harsh view as the complaint was pending since 2012 and it was at the final stage when the impugned order dismissing the complaint on account of non-appearance was passed despite the fact that the parties were trying to effect compromise

in the case.

As noticed above, no one has appeared on behalf of the respondent before the trial Court when the impugned order was passed and even in this appeal, despite due service.

After hearing the counsel for the appellant, I find merit in the present appeal as the appellant has shown a *bona fide* ground for non-appearance when the case was dismissed for non-prosecution on account of noting a wrong date, thus, the counsel for the appellant as well as the appellant/complainant could not appear before the trial Court. A perusal of the impugned order dated 23.02.2015 also show that on the previous date, the parties had shown willingness to effect compromise and for that purpose the case was fixed.

Since none of the parties was present on that date i.e. 23.02.2015, the trial Court adopted a harsh view in dismissing the complaint for non-prosecution, though, the same was pending since 2012 and the appellant/complainant was regularly appearing on the previous dates.

In view of the above, ***the present appeal is allowed; the impugned order dated 23.02.2015 is set-aside and the complaint is restored to its original number.***

The appellant is directed to appear before the trial Court on 27.05.2019 and the trial Court will proceed further, in accordance with law.

Since the complaint pertains to the year 2012, the trial Court will conclude the trial expeditiously within a period of 06 months after the respondent/accused put in appearance in the case.

Disposed of accordingly.

(ARVIND SINGH SANGWAN)
JUDGE

08.05.2019
yakub

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No