

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

**CRM-A No.1194-MA of 2014 (O&M)
Decided on: 03.12.2019**

M/s. Rimple Enterprises

....Appellant

Versus

M/s. A.S.S.G. Marketing Private Limited and others

....Respondents

CORAM: HON'BLE MR JUSTICE ARVIND SINGH SANGWAN

Present : Mr. Harish Bhardwaj, Advocate
for the applicant/appellant.

None for the respondents.

ARVIND SINGH SANGWAN, J. (Oral)

Prayer in this appeal is for setting-aside the order dated 09.01.2014 passed by the trial Court vide which the complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (in short 'the NI Act') was dismissed for non-prosecution.

This case is pending since 2014 and on 18.09.2018, it was noticed that respondents No.1 to 4 have been served, however, no one has put in appearance on their behalf. Even today, there is no representation on behalf of the respondents.

Counsel for the applicant/appellant has argued that at the stage when the case was dismissed for non-prosecution, the evidence of the complaint was already closed. It is further submitted immediately thereafter, the appellant has moved an application for recalling/setting-aside the order dated 09.01.2014, however, the same was withdrawn

being not maintainable and therefore, the present appeal has been filed.

Counsel for the appellant has further argued that the appellant was regularly appearing before the trial Court since its filing on 20.05.2011 and on 24.09.2013, the case was transferred from one Court to the another. On that day, the trial Court recorded the statement of the accused and thereafter, it was adjourned for recording the statement of the defence witnesses. It is further submitted that thereafter on 09.01.2014, the case was dismissed for non-prosecution on account of non-appearance of the appellant and his counsel.

Counsel for the appellant has also argued that even in the application itself, which was filed before the trial Court, a valid and cogent reason was given that on the previous date i.e. 18.12.2013, both the parties and their respective counsels were present and the case was adjourned in their presence for 11.01.2014 and the appellant as well as his counsel has noted the date as 11.01.2014 whereas the case was, in fact, adjourned to 09.01.2014 and for that reason, neither the appellant nor his counsel appeared before the trial Court and immediately, on coming to know about the passing of the impugned order, the application before the trial Court was moved on 14.01.2014 without wasting any time.

As noticed above, there is no representation on behalf of the respondents.

After hearing the counsel for the applicant/appellant, I find that there are sufficient grounds explained by the appellant showing his bona fide for not appearing on 09.01.2014 as the appellant and his counsel have noted a date as 11.01.2014 instead of 09.01.2014. It is

well settled principle of law that no one should be condemned unheard and the very fact that since 2011 till 2014, the appellant was regularly appearing before the trial Court and has concluded his evidence show that the appellant was not negligent in pursuing and prosecuting his case.

Accordingly, the present appeal is allowed; the order dated 09.01.2014 passed by the trial Court is set-aside and the criminal complaint is restored to its original number.

The appellant is directed to appear before the trial Court on or before 15.01.2020 and the trial Court will proceed further, in accordance with law.

(ARVIND SINGH SANGWAN)
JUDGE

03.12.2019
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Whether speaking/reasoned	Yes/No
Whether reportable:	Yes/No