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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 103/2020 & CRL.M.A. 1752/2020**

KANHIYAA LAL KANTI WAL Petitioner

Through: Mr Tushar Kanthwal and Mr Tanuj
Agarwal, Advocates.

versus

NUTAN KUMARI SINHA Respondent

Through

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

% **27.01.2020**

1. The petitioner has filed the present petition, *inter alia*, impugning an order dated 27.09.2019 passed by the learned MM, whereby the petitioner's complaint under Section 138 of the Negotiable Instruments Act, 1881 was rejected on the ground that the complainant (petitioner) was not present and further, the process fee had not been filed for issuance of summons to the accused.
2. The case was listed before the learned MM for the first time on 03.10.2016 and summons were issued to the accused with a direction that process fee be filed within a period of fifteen days. However, processes issued were not received back, therefore, on the next date hearing, that is 24.12.2016, directions were issued for issuance of fresh summons on filing of process fee.
3. It appears from the record that the matter was, thereafter, listed on 31.03.2017. However, neither the petitioner nor his counsel appeared on that date. The matter was, thereafter, posted on 11.10.2017. On this date as well, neither the petitioner nor his counsel appeared. The matter was,

thereafter, posted on 03.01.2018. On this date as well, neither the complainant nor his counsel appeared. However, a proxy counsel appeared for the complainant and the learned MM was pleased to pass an order giving further liberty to the petitioner to file a process fee within fifteen days.

4. The matter was, thereafter, posted on 22.03.2018. On this date, the counsel appeared, however, process fee had not been filed and the previous orders had not been complied with. Nonetheless, the learned MM provided the petitioner yet another opportunity to comply with the previous orders *albeit*, subject to payment of costs amounting to ₹1000. The matter was, thereafter, listed on 05.06.2018. On this date as well, neither the petitioner nor his counsel were present. However, a proxy counsel was present. On this date, the learned MM observed that the process fee was not properly filed and therefore, the processes could not be issued. The learned MM provided yet another opportunity for the petitioner (complainant) and directed that summons be issued subject to payment of cost of ₹2,000/-. And, the matter was directed to be listed on 12.09.2018. The learned MM also directed that on failure of the compliance with the order, the complaint would be dismissed on the next date of hearing without granting further opportunity.

5. It is averred in the petition that after becoming aware of these orders, the petitioner approached his counsel and he confirmed that steps had been taken. Apparently, no steps were taken pursuant to the above-mentioned order dated 05.06.2018. The petition is also silent as to whether the petitioner was represented on the next date of hearing (that is, on 12.09.2018). The petitioner has also not annexed orders passed by the

learned MM on that date and thereafter. However, it is not disputed that the facts as recorded in the impugned order are correct inasmuch as on the previous dates, neither the petitioner nor his counsel had appeared.

6. The learned counsel appearing for the petitioner states that the petitioner had no knowledge as his counsel had not communicated the orders to him. He contends that the petitioner ought not to be penalised for the conduct of his counsel.

7. The contentions advanced by the petitioner are unmerited. The brief narration of the facts indicates that on most of the occasions, the petitioner himself was absent. Repeated opportunities – perhaps more than warranted – had been granted to the petitioner to comply with the order. However, neither were the costs paid nor was the process fee deposited for the summons to be issued. The contentions that the petitioner was not aware of the orders is also unpersuasive because orders are available on website and the petitioner has also averred in his petition that he had become aware of the orders when they were uploaded on the internet.

8. This does indicate that the petitioner was well aware of the orders and could keep track of his case. There is also no explanation for not appearing on the dates fixed.

9. In view of the above, this Court finds no infirmity with the impugned order.

10. The petition is, accordingly, dismissed. The pending application is also disposed of.

VIBHU BAKHRU, J

JANUARY 27, 2020/MK