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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CRL.A. 348/2019

M/S PRAKASH INDUSTRIES LTD Appellant

Through: Mr. Avtar Singh, Advocate.
versus

M/S DUCORN REMEDIES PVT . LTD & ORS

..... Respondent

Through: Mr. Sumit Kr. Khatri and Mr. Parv
Passi, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

% **17.02.2020**

1. The appellant is aggrieved by the order dated 25.9.2017 by virtue of which the complaint was dismissed for non-prosecution. It is submitted by the counsel for the appellant that both the counsels i.e for the complainant as well as accused had appeared before the trial court at 10.00 am and at the request of the counsel for the accused the matter was passed over till 12/12.30 pm and since the appellant or his counsel could not appear, the complaint was dismissed for non-prosecution. The relevant portion of the impugned order reads as under:-

“ It is recalled that at 10:00 am ld. Counsels for both the parties had mentioned the present matter and at the request of both the ld. Counsels, present matter was passover till 12:00 -12:30 pm. However, due to heavy board of 104 cases, the undersigned did not remember that the present matter was passed over.

When the matter was taken up in normal course at about 12:00-12:30 pm, ld. Counsel for accused had appeared and none was present on behalf of the complainant. Unaware of the passover of the matter at 10:00 am by the court, the case was dismissed for non-prosecution as the fact of passover of the case was also not brought to the notice of court by ld. Counsel for the accused also.

Be that as it may, this court does not have power to review its own order. Therefore, the court is compelled to dismiss the present application being not maintainable.”

2. Counsel for the respondent, who appears on advance notice, has not denied the fact that appellant and his counsel had appeared at 10 am in the court. The order reveals that the matter was passed over on joint request. Thereafter, none appeared for the petitioner at 12/12.30 pm. In any case, petitioner and his counsel were there in the court at 10.00 am but could not appear at 12/12.30 pm when the order of dismissal was passed .

3. Keeping in view the facts and circumstances mentioned in the appeal and the fact that it is not the case of total non-appearance on that day, the impugned order is set aside and the complaint is restored to its original number.

4. Let parties appear before the trial court on 26.2.2020 at 2.00 PM.

5. The appeal stands disposed of accordingly.

RAJNISH BHATNAGAR, J

FEBRUARY 17, 2020/ib