

NAFR**HIGH COURT OF CHHATTISGARH, BILASPUR****CRR No. 688 of 2017**

Mahendra Singh Chouhan S/o Shri Kamdev Singh Chauhan aged
about 45 Years R/o Village- Gaurgaon, Police Station- Keshkal,
District- Kondagaon, CG

---- Applicant**Versus**

Rajkishor Rathi S/o Shri Jagdish Rathi aged about 35 Years R/o
Main Road Keshkal, PS- Keshkal, District- Kondagaon, (CG)

---- Non-applicant

For applicant	:	Mr. Vivek Tripathi, Adv.
For applicant	:	Mr. Praveen Tulsian, Adv.

Hon'ble Shri N.K. Chandravanshi, J**ORDER ON BOARD****1-10-2021**

1. This revision has been preferred against the order dated 1-7-2017 passed by the Sessions Judge, Kondagaon distt. Kondagaon (CG) whereby the appeal preferred by the applicant has been dismissed for want of prosecution.

2. Brief facts pertaining to this revision are that vide judgment dated 3-6-2017 passed by the Judicial Magistrate First Class, Keshkal in Criminal Case No. 250/2015, the applicant was convicted under Section 138 of the Negotiable Instruments Act and sentenced to undergo six month's SI and to pay fine Rs. 3,40,000/-, which shall be given to the non-applicant/complainant as compensation under Section 357(1)(b) of the Criminal Procedure Code. Against above order, the applicant preferred criminal appeal (unregistered no. /2017) before learned Sessions Judge, Kondagaon, which was dismissed for want of prosecution vide order dated 1-7-2017. Hence, this revision.

3. Learned counsel for the applicant submits that the applicant was ill before 1-7-2017 because his sugar level was high, therefore, he was not able to appear on the date of hearing. On 1-7-2017 due to inadvertence, he could not inform his counsel in this regard, therefore, he and his counsel did not make appearance on the date of hearing. Thus, non-appearance of applicant was bonafide. He further submits that the applicant wants sincerely that the case should be decided on merit, therefore, he prays that this revision may be allowed and opportunity of hearing be granted to him in the case.

4. Per contra, learned counsel for the non-applicant submits that the applicant has not mentioned anything about his alleged illness and why he

could not appear on the date of hearing, in revision petition. The impugned order shows that counsel for the applicant had appeared on that date but he submitted no instruction from the party. Another counsel also appeared who was expected to appear with the applicant, but he also did not mark his appearance. These facts show that there had been no sufficient cause for non-appearance of applicant. Therefore, the order impugned does not call for any interference of this Court.

5. I have heard learned counsel for the parties and perused the impugned order as well as record of Court below and the available documents.

6. A perusal of the impugned order shows that counsel for the applicant had appeared before the appellate Court but he submitted no instruction from his party. One another counsel appeared and he had submitted that he will inform later, but he also did not appear. In these circumstances, learned appellate court dismissed the appeal for want of prosecution.

7. As per applicant, he was ill before 1-7-2017, therefore, he could not appear before the Court. He has submitted medical document in this regard (Pathology report). He has not submitted any medical certificate which would show that he was suggested for bed rest or restriction of movement from 22-6-2017 to 1-7-2017. It seems that the applicant has not shown cogent reasons for his non-appearance on the date of hearing i.e. 1-7-2017 but he has filed this revision seeking to grant him opportunity of hearing in that appeal. Since, he has been convicted, therefore, he is required to be given proper opportunity, but not showing cogent reasons for his non-appearance on 1-7-2017 compels this Court to impose some costs upon him.

8. In view of above, it is directed that subject to applicant's depositing fine of Rs. 3,000/- (Rs. three thousands) in the account of District Legal Services Authority, Kondagaon by the applicant and submitting receipt of the same before the Sessions Judge, Kondagaon, Distt. Kondagaon, his unregistered criminal appeal (Mahendra Singh Chouhan -v- Rajkishore Rathi) be restored in its original file and hearing opportunity be provided to him and the case be heard and decided as per rules.

9. Revision allowed.

Sd/-
(N.K. Chandravanshi)
Judge