

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-9162-2020 in/and
CRM-A-442-2020
Date of Decision:- 29.4.2022

SURJIT SINGH

....Appellant

Vs.

VIMIL INSTITUTE

....Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present : Mr. Rishu Garg, Advocate with
Mr. Rashveet Singh, Advocate
for the applicant/appellant.

KARAMJIT SINGH, J.(Oral)

CRM-9162-2020

In view of the reasons mentioned in the application,
delay of 158 days in filing the appeal is condoned.

The application stands disposed of.

CRM-A-442-2020

This is an application filed under Section 378(4) Cr.P.C.
for grant of special leave to appeal against order dated 24.7.2019
passed by Ld. Judicial Magistrate 1st Class, Mansa.

I have heard the counsel for the applicant and perused
the impugned order.

The application is allowed.

Leave to appeal Granted.

Office is directed to assign appeal number to the case.

The appellant has challenged the order dated 24.07.2019 passed by Ld. Judicial Magistrate 1st Class, Mansa vide which the complaint filed by the appellant titled Surjit Singh vs. Vimil Institute through its Manager Anil Kumar under Section 138 Negotiable Instruments Act, has been dismissed in default for want of prosecution.

The counsel for the appellant argued that after the completion of preliminary evidence, the accused-respondent was summoned by the trial Court. The case was fixed for 24.7.2019 for summoning of accused/respondent on filing of RC by the appellant/complainant. However, appellant mistook the date as 24.8.2019. Due to the said reason, appellant failed to appear in the trial Court on 24.07.2019 and consequently the impugned order was passed. The counsel further contended that non-appearance of the appellant or his counsel in the trial Court on the date fixed was neither intentional nor willful but the same has happened as the appellant noted wrong date. The counsel further contended that earlier to 24.07.2019, the appellant was regularly appearing in the trial Court.

Admittedly, the appellant had not gained anything by remaining absent on the date fixed in the trial Court. There is nothing to show that there was any mala fide intention on the part of the appellant for his absence from the proceedings before the trial court

on the date fixed. Nothing is available on record to show that previously also the appellant defaulted in the similar manner. So there was only single default on the part of the appellant, on account of which the complaint filed by him under Section 138 Negotiable Instruments Act, dismissed by the trial court for want of prosecution. The absence of the appellant on one date in the complaint case is no ground to dismiss the complaint. ***The Hon'ble Apex Court in Mohd. Azeem Versus A. Venkatesh and another (2002) 7 SCC 726*** has held that one singular default in appearance on the part of complainant, dismissal of complaint is not proper.

Therefore, from the above, I find merit in this appeal and the same is allowed. The impugned order passed by Judicial Magistrate 1st Class, Mansa dated 24.07.2019 dismissing the complaint is set aside subject to cost of Rs.2000/- to be deposited by the appellant with the District Legal Services Authority, Mansa and further to comply with the directions given by Trial Court on the last date preceding 24.07.2019 regarding filing of RC, within a period of 30 days from today. The complaint is ordered to be restored at the stage from where it was dismissed by the trial Court. The Trial Court is directed to proceed further as per law.

The appellant is directed to appear before the Trial Court within next 30 days from today.

(KARAMJIT SINGH)
JUDGE

29.04.2022
Gaurav Sorot

Whether reasoned / speaking? Yes / No

Whether reportable? Yes / No