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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-M-57624-2022

Date of decision : 09.12.2022

Lakhbir Singh

...Petitioner

Vs.

Gurbhej Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK MANCHANDA

Present: Mr. A.S.Khinda, Advocate for the petitioner.

Mr. G.S.Sidhu, AAG, Punjab.

DEEPAK MANCHANDA, J.

The petitioner has filed the present petition under Section 482 Cr.P.C. for quashing the order dated 02.06.2022 (Annexure P-2) passed by the Judicial Magistrate First Class, Kapurthala in complaint No.NACT 670-2017 dated 13.12.2017 vide which the same has been dismissed in default for want of prosecution.

Learned counsel for the petitioner submits that the complainant-petitioner filed a complaint dated 13.12.2017 against the respondent under Section 138 Negotiable Instruments Act, 1881 before the trial Court. He contends that the trial Court has erred in dismissing his complaint on 02.06.2022 (Annexure P-2) for want of prosecution. Thereafter, petitioner/complainant moved an application for restoration of the complaint, however, the same was also dismissed vide order dated 04.11.2022 (Annexure P-4). He further contends that the date on which the complaint was dismissed in default for want of prosecution, the petitioner was in personal difficulty and

this fact was also brought to the knowledge of the counsel for the complainant before the trial Court, but he did not appear before the trial Court. Later, it came to the notice of the petitioner that his application for restoration of the complaint has been dismissed in default for want of prosecution vide order dated 04.11.2022.

Learned counsel for the petitioner submits that the non-appearance of the complainant was totally unintentional and on account of family problem, which was duly brought to the notice of his counsel, however, due to non-appearance of his counsel, in his absence, the complaint was dismissed in default and the petitioner had no role to play, therefore, he prays that the impugned order be set aside enabling the petitioner to pursue his complaint.

A perusal of the record shows that in no way, the absence of the petitioner/complainant is to be benefitted in the complaint case nor there is anything on record to show that there was *mala fide* intention on the part of the petitioner/complainant for his absence from the proceedings. As per the impugned orders, on both occasions there was no representation by the counsel engaged by the petitioner/complainant, which resulted into dismissal on account of absence. In the facts and circumstances of the present case, this Court is of the view that the rights of the petitioner should have been decided on merit and petitioner should not have been thrown out on the technicalities of law. Where technical consideration and merit or cause of substantial justice are pitted against each other, the cause of merit and substantial justice is to prevail.

The reasoning given by the petitioner seems to be genuine. The litigant should not be made to suffer because of the fault of the counsel and it would in the interest of justice, if the complaint filed by the petitioner is

restored to enable him to pursue with the same.

In view of the above, petition is allowed and the impugned order dated 02.06.2022 (Annexure P-2) is set aside and the Complaint No.NACT 670-2017 dated 13.12.2017 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 after giving notice to the parties concerned and to expedite the trial.

(DEEPAK MANCHANDA)
JUDGE

09.12.2022
Gulati/vanita

Whether speaking/reasoned :	Yes	No
Whether Reportable :	Yes	No