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Crl.A.No.1176 of 2023

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 01.12.2023

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THE HONOURABLE MR.JUSTICE M.NIRMAL KUMAR

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The India Cements Limited,
Represented by its Authorized person Mr.S.Kannan,
Registered office at No.827, Dhun Building,
Mount Road, Chennai-600002,
Corporate office at Coromandel Towers,
93, Santhome High Road, Karpagam Avenue,
Raja Annamalai Puram, Chennai-600028. ... Appellant

-Vs-

1.M/S.Aravindan Agencies,
Prop: Mr.R.Ravichandran.
2.Prop: Mr.R.Ravichandran,
Proprietor M/s.Aravindan Agencies,
Both Accused having common business
address at 125 A, Main Road,
Thanneerpandal, Sirkali,
Nagapattinam District-609102. ... Respondents

PRAYER: Criminal Appeal filed under Section 374 of Code of Criminal Procedure, to call for the records in C.C.No.8794 of 2019 on the file of the learned Metropolitan Magistrate, FTC-1, Egmore @ Allikulam, and set aside the judgment, dated 24.08.2022.

For Appellants : Mr.V.Vijayakumar

For Respondents : No Appearance



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JUDGMENT

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2.The appellant as complainant filed a private complaint under Section 138 of the Negotiable Instruments Act, 1881 in C.C.No.8794 of 2019 against the respondent/accused. Due to non-appearance of the appellant, the case has been dismissed for non-prosecution merely on technicality and not on merits.

3.The learned counsel for the appellant submitted that the appellant is leading cement manufacturer in India manufacturing various grades of cements and sells the same through the dealers/stockiest on exclusive/non-exclusive basis. The respondent is one of the dealers at Alangudi, Pudukottai District to sell the products of the appellant. The respondent was having some credit transaction with the appellant. In



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discharge of the credit, the respondent gave cheque for a sum of Rs.3,70,000/- to the appellant. When the same was presented, got dishonored. After following all statutory procedures, the case has been filed. The appellant has got several cases against the defaulters who had given cheque, not honoured. More than 150 cases are pending before the same trial Court.

4.The learned counsel further submitted that the counsel appearing regularly before the trial Court, representing and prosecuting the complaints on behalf of the appellant. On 24.08.2022, the appellant was not aware about listing of the above case. Earlier to it also not received the final notice, dated 28.06.2022. Be that as it may, the appellant does not find fault for the mishap by the trial Court. His only contention is that the impugned judgment to be set aside and the complaint to be taken on file and to take the complaint to its logical end. The appellant would complete the trial of the case without any delay. Being a complainant, he is very much interested to complete the trial without delay. Hence, prays for setting aside the impugned judgment of the trial Court.



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5.It is seen that the complaint dismissed for non-prosecution and not on merits. Hence, notice to the respondent not required. In view of the same, this Court is of the view that real justice can only only fulfilled trial and thereafter, judgment. Hence, this Court set asides the impugned judgment, dated 24.08.2022 passed by the trial Court in C.C.No.8794 of 2019. Accordingly, the case is C.C.No.8794 of 2019 is restored to the file of the trial Court.

6.The trial Court is directed to issue notice for the appearance of the respondent if needed send notice through the jurisdiction Police and ensure his presence. This exercise to be done within a period of two weeks from the date of receipt of a copy of this judgment.

7.The appellant shall appear before the trial Court, be ready with affidavit and all documents and proceed with the case without further delay.



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8.In the result, this Criminal Appeal stands allowed.

01.12.2023

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Speaking Order/Non-Speaking Order

Internet: Yes/No

Index: Yes/No

Neutral Citation: Yes/No

To

The Metropolitan Magistrate, FTC-1,
Egmore @ Allikulam, Chennai.



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