

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CRMA-114-2020 (O&M)
Date of Decision:-25.04.2023

M/S SAMUNDAR FABRICS PRIVATE LIMITED

... Petitioner(s)

Versus

SANTOSH

... Respondent(s)

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CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

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Present:- Mr. G.S.Verma, Advocate
for the appellant.

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KARAMJIT SINGH, J. (Oral)

1. The present petition has been filed by the petitioner against the order dated 29.10.2019 passed by the Judicial Magistrate Ist Class, Ludhiana whereby the criminal complaint titled M/s Samundar Fabrics Pvt. Ltd. vs. Santosh proprietor of M/s Chirag Enterprises having case No.16749-2018 was dismissed in default.
2. The counsel for the petitioner/complainant argued that on the basis of preliminary evidence led by the petitioner/complainant, the accused-respondent was summoned by the trial Court. The case was fixed for 29.10.2019 for summoning of accused/respondent subject to filing of RC. The counsel for the appellant further submits that on that date the

counsel for the petitioner appeared before the learned trial Court and made prayer for grant of one more opportunity to furnish the requisite postal charges. However, the learned trial Court dismissed the complaint in light of the aforesaid default committed on behalf of the petitioner and consequently the impugned order was passed by the learned trial Court. The counsel further contended that the said default was not intentional on the part of the petitioner. The counsel further contends that even otherwise it was the single default on the part of the petitioner, otherwise the complainant was regularly appearing in the learned trial Court.

3. Admittedly, nothing was gained by the petitioner due to non-deposit of requisite postal charges. There is nothing to show that there was any *mala-fide* intention on the part of the petitioner. Nothing is available on record to show that previously also the petitioner defaulted in the similar manner. So there was only single default on the part of the petitioner, on account of which the complaint filed by him under Section 138 Negotiable Instruments Act was dismissed by the trial Court. The Courts are meant to impart justice and as such the learned trial Court should have made sincere endeavour to dispose of the case on merits rather than on default.
4. Therefore, from the above, I find merit in this petition and the same is allowed. The impugned order passed by Judicial Magistrate Ist Class, Ludhiana dated 29.10.2019 whereby the complaint filed by the appellant under Section 138 Negotiable Instruments Act was dismissed in default is set-aside subject to cost of ₹2,500/- to be

deposited by the petitioner with the District Legal Services Authority, Ludhaina. The complaint (Annexure P-1) 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.

5. The petitioner is directed to appear before the trial Court within next 30 days from today.

25.04.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No