

before the trial Court due to mis-communication between him and his counsel.

3. Having heard the learned counsel for the appellant and after perusing the record, it transpires that sufficient cause has been shown by the appellant for his non appearance before the learned trial Court and merely the absence of the appellant on two dates would not justify the dismissal of the complaint for want of prosecution. The impugned order dated 14.12.2018 indicates that the notice issued to the complainant received back with the report that he was not found residing on the address and in the absence of valid service, learned trial Court ought not to have dismissed the complaint for want of prosecution. The Hon'ble Apex Court in **Mohd. Azeem Vs. A. Venkatesh and Another (2002) 7 SCC 726**, **Aseem Shabanli Merchant Vs. Brij Mehra and Another, (2005) 11 SCC 412**, **Narender Parashar Vs. Jagbir Singh, 2009 (3) RCR (Criminal) 246**, **Neh Pal Sharma Vs. Bijender Singh 2009(2) RCR Criminal 751** and **Purushotam Mantri Vs. Vinod Tandon @ Hari Nath Tandon 2009(1) RCR (Criminal) 442**, **Om Parkash Vs. M/s Golden Foresh India Ltd. 2008(4) RCR (Criminal) 445** also affirmed the aforesaid fact. I have gone through all these judgments which full apply to the facts of the present case.

4. Therefore, from the above, I find merit in this appeal and the same is allowed subject to payment of costs amounting to Rs. 5,000/- to be paid to the respondent. The impugned order passed by the learned Judicial Magistrate Ist Class, Yamuna Nagar Jagadhri, dismissing the complaint in default is set aside.

5. 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 after giving notice to the parties concerned.
6. The appeal is decided in limine in order to saved the precious time of the Court and litigation cost of the respondent.

(HARPREET SINGH BRAR)
JUDGE

14.12.2023
Ajay Goswami

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