

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

**CRM-27275-2016 in/and
CRM-A-1564-MA-2016
Date of Decision: February 06, 2023**

**M/s Dewan Chand ... Applicant-appellant
Versus
Kura Ram Prem Chand Firm and others ...Respondents**

CORAM: HON'BLE MR. JUSTICE DEEPAK GUPTA

Present:- Mr. Rajinder Singh Rana, Advocate
for the applicant-appellant.

Mr. Deepak Kumar, Advocate for
Mr. R.S. Mamli, Advocate for the respondents.

DEEPAK GUPTA, J.(Oral)

Criminal complaint No.167, dated 28.05.2014 titled as “*M/s Dewan Chand Ramesh Kumar v Kura Ram Prem Chand Firm*” was dismissed in default, vide impugned order dated 27.02.2015 for default of the complainant to appear. An application for restoration was moved but the same was dismissed by the Trial Court on 31.05.2016 and thereafter, complainant approached this Court by way this application for grant of leave to appeal.

Along with this application, application under Section 5 of the Limitation Act is also filed to condone the delay of 363 days in filing the application for grant of leave to appeal, submitting that prior to filing of this application for grant of leave of appeal, the applicant-appellant was pursuing his remedy before the Trial Court for restoration of the appeal.

Heard.

For the reasons mentioned in the application, delay of 363 days in filing the application for grant of leave to appeal is condoned, subject to all just exceptions.

CRM-27275-2016 in/and CRM-A-1564-MA-2016

Application bearing CRM-27275-2016 stands disposed of.

Coming to the main application, the case of the applicant-appellant is covered by the judgment of a co-ordinate Bench of this Court in case of *“Nitesh Kumar v Sonu alis Sunil Kumar”* 2017(2) Law Herald 1348, whereby it was held that a complaint cannot be dismissed in default only for one single default of the complainant in appearance.

It is concealed position that respondent had not been served by the time when the complaint was dismissed in default.

Having regard to the aforesaid position, the impugned order dated 27.02.2015 is hereby set aside. The Trial Court is directed to restore the complaint to its original number and proceed further in accordance with law.

Disposed of.

February 06, 2023
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(DEEPAK GUPTA)
JUDGE

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