

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

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**CRM-27431-2017 in/and
CRM-A-1831-MA-2017
treated as CRA-AS-104-2023
Date of decision: 28.02.2023**

Ashok Kumar Sharma

.....Applicant/Appellant

Versus

Brij Bhushan

.....Respondent

CORAM: HON'BLE MRS. JUSTICE MANJARI NEHRU KAUL

Present : Mr. Parminder Singh, Advocate with
Mr. Ketan Chopra, Advocate
for the applicant/appellant.

Mr. Rakesh Bakshi, Advocate
for the respondent.

MANJARI NEHRU KAUL, J. (ORAL)

CRM-27431-2017

Prayer in the application is for condonation of delay of 1380 days in filing the leave to appeal.

Learned counsel appearing for the applicant/appellant submits that the applicant/appellant had acted bonafidely on the legal advice rendered to him by his counsel and preferred revision against the order dated 30.08.2013 passed by learned Judicial Magistrate 1st Class, Karnal. However, the revision petition preferred by the applicant/appellant was dismissed by the Court of learned Additional Sessions Judge, Karnal as being not maintainable. Learned counsel submitted that therefore, now the present leave to appeal had been filed by the applicant/appellant. Learned counsel prayed that the delay in filing the instant leave to appeal was thus not intentional and had occurred only due to the aforementioned reasons. A prayer was, therefore, made that the instant leave to appeal be allowed.

Learned counsel for the respondent while controverting the submissions made by the counsel opposite prayed for the dismissal of the leave to appeal. Learned counsel submitted that there had been a huge delay in the filing of the instant leave to appeal owing to the negligence of the applicant/appellant, therefore, he could not be now allowed to take advantage of his own negligence.

I have heard learned counsel and perused the relevant material on record.

No doubt there is a huge delay in filing of the present leave to appeal, however, the same cannot be said to have been caused intentionally by the applicant/appellant as he was pursuing a revision petition before the learned Additional Sessions Judge, Karnal. Therefore, there is sufficient reason to allow the instant application.

Accordingly, the instant application is allowed and delay of 1380 days in filing the instant leave to appeal is hereby condoned.

CRM-A-1831-MA-2017

Heard.

Leave to appeal is granted.

The Registry has assigned the number to the appeal as CRA-AS-104-2023.

CRA-AS-104-2023

The present appeal is directed against the order dated 30.08.2013 passed by the learned Judicial Magistrate 1st Class, Karnal vide which the complaint under Section 138 of the Negotiable Instruments Act, 1881 (for short, 'the NI Act') was dismissed in default

and order dated 09.05.2017 whereby revision preferred against order dated 30.08.2013 was dismissed by the learned Additional Sessions Judge, Karnal.

Learned counsel for the appellant argues that the Trial Court gravely erred in dismissing the complaint of the appellant in default. He submitted that it was a matter of record that on the previous date of hearing the appellant was present for his examination, however, it was the respondent accused who had jumped his bail and absented himself from the Court. Thereafter, vide order dated 29.05.2013, the bail bonds of the respondent accused were cancelled and the case was adjourned for securing his presence through warrants of arrest for 30.08.2013. Meanwhile, the respondent accused surrendered before the Trial Court and got the concession of bail. Thereafter, on 30.08.2013, in the absence of the appellant, the complaint was dismissed by the Court below. Learned counsel argued that as 30.08.2013 was fixed by the Court for securing the presence of the accused, the appellant was under a bonafide impression that his presence was not required, which was the reason that he failed to put in appearance on 30.08.2013. Learned counsel thus prayed that in the aforementioned background and sequence of events the Trial Court was not at all justified in dismissing the complaint in default specially when it was the respondent accused who had absented himself before the Trial Court by jumping bail.

Learned counsel for the respondent vehemently opposed the prayer and submissions made by the counsel opposite. It was argued that the date fixed i.e. 30.08.2013, was in the notice of both the

appellant and his counsel, however, intentionally the complainant chose to absent himself on the date fixed. He further argued that in the light of the aforementioned willful conduct of the appellant, the Trial Court had rightly dismissed his complaint in default.

I have heard learned counsel and perused the relevant material on record.

It is a matter of record that the respondent accused had absented himself on 29.05.2013 as a result of which the Court fixed the next date of hearing for 30.08.2013 for his appearance. However, meanwhile the respondent accused appeared before the Trial Court before the date fixed and got the concession of bail. It is also a matter of record that the appellant had absented himself before the Trial Court only on one date i.e. 30.08.2013 which date was initially fixed for securing the presence of the respondent accused. In the above circumstances, this Court is of the opinion that procedural technicalities should not come in the way of the decision of a case on merits, as the reason for the absence of the complainant on 30.08.2013 comes across as being bonafide, therefore, the complainant deserves the indulgence of this Court.

Accordingly, the appeal is allowed and the impugned orders are set aside. The complaint in question is restored to its original number and stage.

The parties are directed to appear before the Trial Court on 18.04.2023.

28.02.2023

(MANJARI NEHRU KAUL)
JUDGE

Vinay

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