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

CRR-1155-2023 (O&M)

Date of Decision: May 02, 2023

Pawan Kumar

.....Petitioner

Versus

Savitri

.....Respondent

CORAM: HON'BLE MR.JUSTICE RAJESH BHARDWAJ

Present: Dr.Jai Veer Singh Malik, Advocate
for the petitioner.

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RAJESH BHARDWAJ, J.(ORAL)

CRM-19748-2023

Instant application has been filed for condonation of delay of 143 days in filing the present revision petition.

It has been contended by counsel for the applicant that the accompanying revision petition has been filed with a delay of 143 days. He submits that applicant is the complainant who filed a complaint under Section 138 of the Negotiable Instrument Act. He submits that he was regularly appearing before the trial Court on all the dates, however, on one day he remained absent and hence the complaint was dismissed for non-prosecution. He submits that there remained a miscommunication between the applicant/complainant and his counsel and on account of the same, the impugned order, dated 11.10.2022, by virtue of which his complaint was dismissed for non-prosecution, had not come to his knowledge and the moment he came to know about the same, he approached this Court and on account of the same, there occurred a delay of 143 days in filing the present

revision petition, which is totally unintentional and bona fide. He submits that the petitioner would suffer an irreparable loss and injury if the same is not condoned and complaint is not heard on merits.

After hearing counsel for the applicant and perusing the record, the Court does not find it necessary, at this stage, to issue notice to the other side.

In view of the facts and circumstances, the present application is allowed. Delay of 143 days in filing the revision petition is condoned.

CRR-1155-2023

Petitioner has filed the present revision petition impugning the order dated 11.10.2022, passed by learned Sub Division Judicial Magistrate, Pataudi, vide which complaint filed by the petitioner has been dismissed in default for want of prosecution.

It has been contended by counsel for the petitioner that the petitioner advanced a loan of Rs.3.00 lakhs to the respondent for which respondent, in order to discharge her legal liability, issued a cheque bearing No.649946 dated 24.02.2020 amounting to Rs.3.00 lakhs. He submits that on presentation of the same before the concerned Bank, the same was dishonoured with the remarks 'Funds insufficient'. He submits that thereafter respondent was informed but no payment was made. He submits that on the request of the respondent, when the said cheque was presented again, the same was again dishonoured with the same remarks, 'Funds insufficient'. He submits that in pursuant to the same, he filed a complaint under Section 138 of the Negotiable Instrument Act in which proceedings had been commenced. He submits that on all the dates the

petitioner and his counsel duly appeared before the trial Court, however, inadvertently, on one day, i.e. 11.10.2022, neither the petitioner nor his counsel could appear before the trial Court and for this reason his complaint was dismissed for non-prosecution. He submits that petitioner is a victim and absence of his counsel as well as of himself was totally unintentional. He submits that the learned trial Court has fallen in error in dismissing the complaint for non-prosecution and thus not hearing the same on merits. He submits that the petitioner has suffered an irreparable loss and injury as the case has not been decided on merits. He further submits that the petitioner is left with no remedy than to approach this Court with the prayer that complaint filed by the petitioner/complainant be restored on its original number and the same be heard on merits.

Heard.

After hearing counsel for the petitioner and perusing the record, it is apparent that petitioner before this Court is the complainant, who had filed a complaint under Section 138 of the Negotiable Instrument Act. It is apparent from the record that petitioner was appearing on the earlier dates regularly, however, on 11.10.2022 he, as well as his counsel both remained absent and thus the petition was dismissed for non-prosecution and thus the same was not decided on merits.

In view of the above facts and circumstances, the Court is prima facie convinced that the complaint filed by the petitioner deserves to be heard on merits. However, the Court does not find it necessary at this stage to issue notice to the respondent/accused as the same would further take more time for decision of the case. Thus, to meet the ends of justice,

impugned order dated 11.10.2022 is set aside. Trial Court is directed to restore the complaint filed by the petitioner/complainant to its original number and after issuing notice to the other side and securing presence of both the parties, proceed with the complaint and decide the same on merits.

Disposed of accordingly.

May 02, 2023
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(RAJESH BHARDWAJ)
JUDGE

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| 1. | Whether speaking/reasoned ? | Yes/No |
| 2. | Whether reportable ? | Yes/No |