

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-380-2023 (O&M)

Date of decision: 17.08.2023

Atul Kumar

....Appellant

versus

Satish

....Respondent

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Baljeet Beniwal, Advocate for appellant

ARUN MONGA, J. (ORAL)

Leave to appeal was granted vide order dated 16.08.2023.

2. Appeal herein is to challenge the order dated 12.06.2023 vide which his complaint bearing No.NACT-231 dated 26.11.2018 titled "Atul Kumar vs. Satish" under Section 138 of Negotiable Instruments Act read with section 420 of IPC, was dismissed in default by learned Judicial Magistrate 1st Class, Hodal.

3. Brief facts of the case are that the respondent borrowed a sum of Rs.1,00,000/- from the appellant as a friendly loan for three months and the respondent in discharge of the said liability issued a cheque no.853728 dated 08.10.2018 in favour of the appellant, which was dishonored. In due course, a complaint was filed in Court and the respondent was summoned.

4. Learned counsel for appellant submits that notice was issued to the respondent on 19.01.2019. Thereafter the respondent appeared and sought time. He further submits that due to outbreak of COVID-19, the case could not be taken up. Respondent took time on one pretext to other on several occasions and also remained absent in between as well. On 07.01.2023, the complainant's examination-in-chief was conducted and the matter was adjourned for 15.04.2023. On that date, the Court was on leave and the case was adjourned for 12.06.2023.

4.1. Learned counsel next submits that appellant was regularly appearing before learned trial Court, but on 12.06.2023 neither the appellant nor his counsel appeared. The counsel requested his colleague to move exemption application as on 12.06.2023 the

counsel for the appellant was not well, but the same could not be filed inadvertently and the case was dismissed in default vide order dated 12.06.2023, impugned herein.

4.2. Learned counsel further submits that the impugned order passed by learned trial Court is totally against the law and equity and is not sustainable in the eyes of law. Learned trial Court neither issued any notice to the appellant nor sent any intimation to the appellant to appear before the Court despite knowing the fact that the appellant appeared before learned trial Court on all the previous dates. Hence, the present appeal.

5. Notice to respondent was dispensed with vide order dated 16.08.2023.

6. I have heard learned counsel for appellant and have perused the case file carefully.

7. It is borne out from the record that the impugned order was passed in the absence of the complainant. Complainant has given plausible explanation for his non-appearance. This Court finds the explanation to be cogent, therefore, the appeal is allowed and impugned order dated 12.06.2023 passed by learned Judicial Magistrate 1st Class, Hodal, is set aside. Complaint is revived to its original number and stage. Appellant is directed to appear before learned Court below on 05.09.2023 for further proceedings.

8. Needless to say, proceedings before learned Court below to commence/continue, in accordance with law.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

17.08.2023
'D'vir

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