

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

CRM-A-1682-MA-2015 in/&

CRA-AS-389-2023(O&M)

Date of Decision:-22.08.2023

Dinesh Kumar.

.....Appellant.

Vs.

Rajender.

.....Respondent.

CORAM:- HON'BLE MR. JUSTICE JASJIT SINGH BEDI

Present:- Mr. Parveen Kumar, Advocate for
Mr. Abhimanyu Singh, Advocate for the Appellant.

Mr. Chiranji Lal, Advocate for the respondent.

JASJIT SINGH BEDI, J.(ORAL)

CRM-A-1682-MA-2015

Heard.

Leave to appeal is granted. On direction to the Registry,
number CRA-AS-389-2023 has been assigned.

CRA-AS-389-2023

A complaint no.1269 dated 19.12.2014 titled as Dinesh Kumar
Vs. Rajender came to be dismissed in default by the court of Judicial
Magistrate, Gurgaon vide order dated 14.08.2015 against which the instant
appeal has been filed. The impugned order reads as under:-

*“ Today the case was fixed for complainant. Case called
several times since morning but none has appeared on
behalf of the complainant before this Court. Perusal of the
file shows that none has appeared on behalf of the*

complainant on the last date of hearing also. Now it is 2.00 PM. Waited Sufficiently. Further wait is not justified. Therefore, the present complaint is dismissed in default for want of prosecution. File be consigned to the record room after due compliance.”

The Counsel for the applicant/appellant submits that on account of his counsel, though the date fixed was 12.08.2015, he (complainant) had been informed that the date was 12.10.2015 because of which the complainant firstly did not appear on 12.08.2015 and on 14.08.2015 on which date the impugned order came to be passed. He contends that the impugned order be set aside and the complaint be restored to its original number for an adjudication on merits. Reliance is placed on **M/s BLS Infrastructure Limited Vs. M/s Rajwant Singh & Ors. 2023(2) RCR (Criminal) 49 and Sunil Kumar Vs. Sameer Mansuri CRM-A-279-2023 in/& CRA-AS-253-2023 Decided on 10.05.2023.**

The Counsel for the respondent on the other hand contends that the impugned order had rightly been passed and no case for interference was made out.

I have heard Counsel for the parties.

A perusal of the judgment of Hon’ble Supreme Court in **M/s BLS Infrastructure Limited’s case (supra)** would reveal that a complaint under Section 138 of the Negotiable Instruments Act ought to be dismissed in default for want of prosecution in these circumstances where the proceedings could not be continued in the absence of the complainant. In the instant case a perusal of the order dated 12.08.2015 would show that the case was at the stage of awaiting the presence of the accused and, therefore, the presence of the complaint could very well have been dispensed with.

However, the Court choose to dismiss the case in default for want of prosecution. This was an unduly harsh measure adopted by the court and an opportunity must be granted to the appellant/complainant to pursue his case on merits.

In view of the above, the present appeal is allowed and the impugned order dated 14.08.2015 is set aside. The Trial Court is directed to restore the complaint to its original number and proceed further in accordance with law. The parties are directed to appear before the Trial Court on 21.09.2023 for further proceedings.

(JASJIT SINGH BEDI)
JUDGE

August 22, 2023

Vinay

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