

278**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH****CRA-AS-393-2023 (O&M)****Date of decision: 11.09.2023**

Gurpreet Singh

....Appellant

versus

Jagdish Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Tribhawan Singla, Advocate,
for the appellant

ARUN MONGA, J. (ORAL)

Leave to appeal was granted vide order dated 08.08.2023.

2. Appeal herein is to challenge the order dated 05.01.2022 vide which his complaint bearing No. NACT-424-2021 dated 05.01.2022 titled "Gurpreet Singh vs. Jagdish Singh and others" under Section 138 of Negotiable Instruments Act, was dismissed in default for non-prosecution by learned Addl. Chief Judicial Magistrate, Barnala.

3. Brief facts of the case are that respondent No.1 and the appellant were in close relation and on 11.08.2018 respondent No.1 demanded a sum of Rs.1,00,000/- from the appellant as a loan on interest basis and respondent No.1 in discharge of the said liability executed a pronote and receipt in favour of the appellant on 11.08.2018 and thereafter issued a cheque no.000044 dated 22.07.2021 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 the complaint was fixed for preliminary evidence of the complainant when the impugned order was passed by the learned Court below in the absence of the complainant. He further submits that prior to the passing the impugned order, the appellant was regularly appearing before learned trial Court, but on 05.01.2022 neither the appellant nor his counsel appeared.

- 4.1. Learned counsel next submits that absence of the appellant before learned trial Court was not intentional rather on account of noting down a wrong date of hearing by Clerk of learned counsel and therefore due to the aforesaid reason which was beyond the control of the appellant the case was dismissed in default vide order dated 05.01.2022, 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 08.08.2023.
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 05.01.2022 passed by learned Addl. Chief Judicial Magistrate, Barnala, is set aside. Complaint is revived to its original number and stage. Appellant is directed to appear before learned Court below on 30.10.2023 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

11.09.2023
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Whether speaking/reasoned:	Yes/No
Whether reportable:	Yes/No