

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

CRM-A-274-2022 in/&

CRA-AS-522-2023(O&M)

Date of Decision:-07.11.2023

M/s Cement Sales.

.....Appellant.

Vs.

Balbir Singh.

.....Respondent.

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

Present:- Mr. Divyam Singh, Advocate for the Appellants.

None for the Respondent.

JASJIT SINGH BEDI, J.(ORAL)

CRM-19531-2022 in
CRM-A-274-2022

The prayer in the application under Section 5 of the Limitation Act seeking condonation of 670 days delay in filing the appeal.

Heard.

For the reasons stated in the application, the same is allowed and delay of 670 days in filing the present appeal is condoned.

CRM-A-274-2022

Heard.

Leave to appeal is granted. On direction to the Registry, number CRA-AS-522-2023 has been assigned.

CRA-AS-522-2023

A complaint no.513 dated 10.03.2016 titled as M/s Cement Sales Vs. Balbir Singh came to be dismissed in default by the court of

Judicial Magistrate, Panipat vide order dated 15.03.2018 against which the instant appeal has been filed. The impugned order reads as under:-

“ None one appeared on behalf of the complainant despite repeated calls since morning. Sufficiently waited upto 04.00 PM. Court time is over. The complaint is dismissed in default. File be consigned to the records after due compliance.”

The Counsel for the applicant/appellant submits that on 15.03.2018 the respondent/accused appeared for the first time and on the said date due to the non presence of the appellant/complainant the impugned order came to be passed. He submits that the appellant/complainant or his counsel was having no knowledge about the date in the complaint nor had they receive any summons. 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.**

I have heard the Counsel for the applicant/appellant and perused the paper book.

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 those circumstances where the proceedings could not be continued in the absence of the complainant. In the instant case a perusal of the order dated 15.03.2018 would show that the case was at the stage of awaiting the presence of the accused as he had been

declared a proclaimed person and, therefore, the presence of the complainant 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 specially as it was the accused who had absconded and had been declared a proclaimed person and, therefore, 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 15.03.2018 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 23.11.2023 for further proceedings.

(JASJIT SINGH BEDI)

JUDGE

November 07, 2023

Vinay

<i>Whether speaking/reasoned</i>	<i>Yes/No</i>
<i>Whether reportable</i>	<i>Yes/No</i>