

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CRA-AS-524-2023 (O & M)
Date of decision: 09.11.2023

Rajender Kumar
V/s
Media Success Academy and another

.... Appellant

...Respondents

CORAM: HON’BLE MR. JUSTICE JASJIT SINGH BEDI

Present: Mr. Satyam Arora, Advocate,
for Mr. Vikas Kumar, Advocate, for the petitioner.

Mr. Anil Mehta, Advocate,
for the respondents No.1 and 2.

JASJIT SINGH BEDI, J. (Oral)

A complaint bearing case No.853/2017 titled as ‘Rajender Kumar versus Media Success Academy and another’ came to be dismissed in default by the court of Judicial Magistrate Ist Class, Faridabad vide order dated 25.08.2017 against which the instant appeal has been filed. The impugned order reads as under:-

“Case called several time. None has put in appearance on behalf of the complainant nor any intimation received. In the interest of justice, file be again put up after lunch for cross-examination of complainant”.

“File again put up after lunch. Case calls several time. It is 3.00 p.m. None has put in appearance on behalf of complainant nor any intimation received. As the case was fixed for cross-examination of the complainant but complainant has not appeared nor any intimation is received. Hence, complaint in hand is dismissed for want of prosecution. File be consigned to record room, after due compliance”.

2. The Counsel for the appellant submits that during the course of

the trial, the statement of the accused was recorded under Section 263(g)

Cr.P.C. on 07.06.2017 and the case was adjourned to 24.07.2017 for DWs. On 24.07.2017, the accused moved an application under Section 145(2) of the Negotiable Instruments Act for cross-examination of the complainant which was allowed on the same date and the matter was adjourned for cross-examination of the appellant/complainant. Inadvertently, the appellant/complainant noted down the next date of hearing as 23.10.2017. When the appellant came to the Court on that date, it came to his knowledge that the complaint had already been dismissed for want of prosecution vide order dated 25.08.2017 on account of non-appearance of the learned counsel for the appellant/complainant. A further enquiry revealed that, in fact, the complaint case was ordered to be adjourned to 25.08.2017 vide order dated 24.07.2017 and not for 23.10.2017 the date which was wrongly noted down by the appellant/complainant. He contends that as absence of the appellant on 25.08.2017 was completely unintentional and *bona fide*, the impugned order was liable to be set aside as the appellant/complainant had been pursuing the case relentlessly and with due diligence. Even otherwise, dismissal of a complaint for want of prosecution was an unduly harsh measure in the facts and circumstances of the instant case. He, therefore, contends that the impugned order be set aside and the complaint be restored to its original number for an adjudication on merits.

3. The learned counsel for the respondents-accused, on the other hand, contends that the impugned order was rightly passed as the appellant/complainant had not appeared on the date in question.

4. I have heard the learned counsel for the parties and perused the paper-book.

5. Apparently, the complaint came to be instituted in the year 2017

nothing on the record to show that the applicant/appellant was in any manner adopting dilatory tactics to the detriment of the accused-respondent. Therefore, in my opinion, the impunged order is unduly harsh and oppressive and has, therefore, resulted in a miscarriage of justice as the absence of the appellant/complainant on 25.08.2017 seems to be *bona fide* and unintentional. In fact, the applicant/appellant did not stand to benefit in any manner by not appearing on the date fixed.

6. In view of the above, the present appeal is allowed and the impugned order dated 25.08.2017 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 30.11.2023 for further proceedings.

(JASJIT SINGH BEDI)
JUDGE

November 09, 2023
sukhpreet

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No