



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of decision: 25th September, 2023*

+ **CRL.L.P. 187/2014**

ANANT RAJ AGENCIES PVT LTD Petitioner
Through: Mr.Aayush Malhotra, Advocate.

versus

R.L. VERMA & SONS & ORS Respondents
Through: Respondent no.3 in person.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

1. The present petition seeking grant of leave to appeal has been filed against the order dated 1st June, 2012 passed by the learned Metropolitan Magistrate (MM), South, New Delhi in CC No.331/1, whereby the complaint filed by the petitioner under Section 138 of the Negotiable Instruments Act, 1881 (NI Act) was dismissed in default on account of non-appearance of the counsel for the petitioner and resultantly, the respondents/accused were acquitted.
2. Having heard the parties and perused the record, this Courts deems it fit to grant leave to appeal.
3. Registry is directed to register the Criminal Appeal and number the same.

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4. Accordingly, the petition stands disposed of.

CRL.A. _____ (to be numbered by the Registry)

5. Admit.

6. Brief facts leading to the filing of the present appeal are as follows:

- i. The respondent no.1 through its *karta* the respondent no.3 approached the appellant company for grant of loan of Rs.25,00,000/-. The respondent no.3 stood as the guarantor of the respondent no.2 in his personal capacity.
- ii. The terms and conditions of the loan were reduced into writing *vide* agreement dated 8th January, 2003, pursuant to which a sum of Rs.25,00,000/- (Twenty Five Lakh Rupees) was paid to the respondent no.1.
- iii. In discharge of the aforesaid loan along with interest, a cheque bearing no.748955 for Rs.75,00,000/- (Seventy Five Lakh Rupees) dated 14th November, 2005, was issued by the respondents to the petitioner, which was dishonoured due to insufficiency of funds.
- iv. The appellant issued a legal notice dated 25th November, 2005, calling upon the respondents to make payment of the aforesaid amount. However, when the respondents failed, the appellant filed the present complaint under Section 138 of the NI Act.
- v. The said complaint was dismissed by the learned MM *vide* order dated 1st June, 2012 on account of non-appearance of the appellant and the accused was acquitted. The impugned order also noted that the appellant had not been appearing for last many dates.

7. Aggrieved by the aforesaid order of the learned MM, the present appeal has been filed. During the pendency of the appeal, the respondent

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no.2 has passed away.

8. Counsel for the appellant submits that the appellant was diligently appearing in the complaint through the authorized representative and therefore, the impugned order wrongly states that the appellants have not been appearing since last many dates. In this regard, attention of the Court has been drawn to orders passed on 1st September, 2011 and 31st October, 2011, when counsel for the appellant was duly present. Further, even on 27th February, 2012, proxy counsel appearing for the appellant filed an exemption application for non-appearance of the appellant on the said date.

9. It is further submitted that the counsel for the appellant inadvertently missed the hearing on 1st June, 2012 on account of the advocate's clerk not noting the next date of hearing in the diary.

10. *Per contra*, the respondent no.3, Mr. Dhruv Verma representing himself and the respondent no.1 submits that there is no infirmity in the impugned order as the appellant was not appearing before the Trial Court. He further submits that it has wrongly been stated by the petitioner that the clerk had wrongly noted the date of the matter. It has also been falsely stated that the appellant got to know about the dismissal of the complaint during Court holidays.

11. I have heard the parties and perused the material on record.

12. A perusal of the order dated 1st September, 2011 would show that the counsel for the appellant was duly present on the said date. In fact, none appeared on behalf of the respondents and hence Non-Bailable Warrants (NBWs) were issued against them. On the next date of hearing also, the appellant was represented, even though the learned Presiding Officer was on leave.

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13. On 27th February, 2012, there was an exemption application filed on behalf of the appellant, which was allowed. In fact, an exemption was also filed on behalf of the respondents on the said date. Thereafter, the matter was listed on 1st June, 2012, when the complaint was dismissed on account of non-appearance of the appellant and the respondents were acquitted.

14. In my considered view, the dismissal of the complaint by the learned Metropolitan Magistrate on account of non-appearance of the appellant on one date was very drastic. As noted above, the appellant was duly represented on previous hearings and his counsel did not appear only on one date of hearing, when the impugned order was passed.

15. Even if it is assumed that the non-appearance on behalf of the appellant on 1st June, 2012 was on account of a mistake on part of his counsel, the appellant cannot be made to suffer on that count.

16. It is a settled principle of law that courts should decide cases on substantive merits rather than on technicalities. Even though the respondent appearing in person has submitted that the reasons given by the appellant for not appearing on 1st June, 2012 are not *bona-fide*, taking into account that the non-appearance was only on one particular date, there was no justification in dismissal of the complaint, which was filed as far back in 2006. The respondents could have been compensated for the non-appearance by way of costs being imposed on the appellant.

17. In view of the discussion above, the appeal is allowed and the impugned order dated 1st June, 2012 is set aside subject to the petitioner paying of costs of Rs.30,000/- to the respondent no.3. Resultantly, the complaint filed by the appellant is restored and it shall be proceeded with from the stage on which it was pending on 1st June, 2012.

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18. The parties shall appear before the learned Chief Metropolitan Magistrate on 11th October, 2023, who shall assign the complaint to the competent Magistrate.

19. The present appeal stands disposed of in terms of the above.

AMIT BANSAL, J.

SEPTEMBER 25, 2023

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