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

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Reserved on: October 6, 2023

Decided on: December 19, 2023

+ **CRL.L.P.24/2019**

ALOK CHOPRA

..... Petitioner

**Through: Mr. Shiv Chopra,
Ms. Aadhyaa Khanna and
Mr. Siddharth Arora,
Advocates.**

V

DHRUV VERMA

..... Respondent

Through: Respondent in person.

CORAM

HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

J U D G M E N T

CRL.M.A.433/2019 (condonation of delay)

1. The petitioner has filed the present leave petition after a considerable delay of about 706 days. It is stated that the impugned order was passed on 07.12.2016 and the present leave petition/appeal had to be filed before the expiry of 60 days. The petitioner was never informed by his counsel about the passing of the impugned order on 07.12.2016 whereby the complaint under section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as “NI



Act”) bearing CC no.22916/2016 titled as **Dr. Alok Chopra V Dhruv Verma** was ordered to be dismissed for non-prosecution.

2. The petitioner was in constant telephonic contact with the counsel who assured him that his matter is being pursued with due diligence and also assured that during the years 2017-18, the petitioner was being effectively represented. The petitioner came to know about the dismissal of the present complaint for want of prosecution in December, 2018 when he was informed by the counsel about the dismissal of the complaint for non-prosecution. The authorized representative of the petitioner also left the employment. The non appearance of the petitioner was neither deliberate nor intentional. The application is supported by the affidavit of the petitioner who is aged more than 65 years.

3. The respondent argued that the petitioner has filed the present leave petition after more than 02 years from the date of dismissal of the complaint without giving any cogent reason.

4. It appears that the petitioner was not properly informed by his previous counsel about the passing of the impugned order dated 07.12.2016 whereby the complaint was ordered to be dismissed in



default as well as for non-prosecution. The petitioner cannot be punished for the negligence or slackness on the part of the previous counsel. The petitioner has shown sufficient cause for his non-appearance before the trial court. After considering all facts, the delay of 706 days in filing the present criminal leave petition is condoned.

5. The application stands disposed of.

CRL.L.P. 24/2019

6. Leave granted.

7. The present petition stands disposed of.

Criminal Appeal No. _____/2023 (to be numbered)

8. The present appeal is filed under section 378 of the Code of Criminal Procedure, 1973 (hereinafter referred to as “**the Code**”) to impugn the order dated 07.12.2016 (hereinafter referred to as the “**impugned order**”) passed by the court of Ms. Geetanjali, MM-03, New Delhi District, Patiala House Courts, New Delhi (hereinafter referred to as the “**trial court**”) whereby the complaint bearing no.22916/2016 titled as **Dr. Alok Chopra V Dhruv Verma** filed by the petitioner under section 138 of the Negotiable Instruments Act,



1881 (hereinafter referred to as “NI Act”) was ordered to be dismissed in default as well as for non-prosecution.

9. The petitioner filed the abovementioned complaint on the basis of the cheques as detailed in the complaint stated to have been signed and issued by the respondent, which upon presentation, got dishonored with the remark “Funds Insufficient” vide cheque returning memo dated 19.01.2011. The respondent did not pay the cheque amount despite the legal notice issued on 24.01.2011.

10. The trial court vide the impugned order had dismissed the complaint bearing CC no.22916/2016 filed by the petitioner in default as well as for non-prosecution. The impugned order is reproduced as under:

Perusal of the record shows that none is appearing on behalf of complainant for the last three dates. Today also, none is responding on behalf of complainant despite repeated calls.

From the above said facts, it may be concluded that complainant is not interested to pursue present complaint case hence present complaint case is dismissed in default as well as for non prosecution.

11. Being aggrieved by the impugned order, the petitioner filed the present appeal to challenge the impugned order on the grounds that the petitioner was not being effectively represented in the trial court.



The previous counsel for the petitioner did not appear before the trial court on several occasions and neither did he inform the petitioner about the dismissal of the complaint in default as well as for non-prosecution. Instead, the previous counsel informed the petitioner that his case is being regularly attended and is being pursued diligently. The complaint filed by the petitioner was for dishonour of cheques totalling to Rs.89,00,000/- and grave financial prejudice shall be caused to him if the present appeal is not allowed. The petitioner should not suffer due to the ineffective and incomplete legal assistance by the previous counsel.

12. The counsel for the petitioner advanced oral arguments and also submitted the written arguments. The counsel for the petitioner argued that the respondent has admitted his liability by writing a letter to the petitioner. The counsel for the petitioner, in his written submissions, referred to various dates of hearing and proceedings conducted before the trial court and stated that the respondent was ordered to be summoned vide order dated 22.06.2012. The complaint was adjourned for issuance of summons to the respondent as well as for issuance of court notice to the petitioner which were issued again



and again. The petitioner, being a doctor, was unavailable to appear in person and was by assured by the counsel that he would be represented properly. It is argued that the non-prosecution of the complaint was not deliberate as he was assured by his counsel that he would be represented properly. Accordingly, the counsel for the petitioner, after citing various decisions passed by the Supreme Court and Coordinate Benches of this Court, prayed that the complaint bearing CC no.22916/2016 be restored.

13. The respondent advanced oral arguments and also submitted written submissions. In his preliminary submissions, the respondent argued that the petitioner was not being represented for about three and a half years either in person or through authorized representative/counsel/proxy counsel. The petitioner was directed to appear in person on 25.10.2016 vide order dated 28.09.2015 to advance arguments on the issue of jurisdiction for which the appearance of the petitioner was essential due to the Negotiable Instruments (Amendment) Act, 2015. The trial court issued court notices several times to the petitioner but despite those court notices, the petitioner did not appear and due to this reason that trial court



could not proceed further the including the giving of notice under section 251 of the Code. There is no infirmity in the impugned order dated 07.12.2016 and the dismissal of the complaint as per section 256 of the Code.

13.1 In his detailed submissions, the respondent after referring the dates of hearing before the trial court, argued that during the 13 dates of hearing before the trial court spanning over three and a half years since the respondent was summoned on 11.07.2013, the petitioner was not present on 10 dates either in person or through any authorized representative including the advocate. The trial court had issued court notice to the petitioner five times. The respondent had appeared on 11 dates of hearing out of the 13 dates. The respondent also gave details of various hearings before the trial court to show that the petitioner was not diligent in prosecution of the complaint. The respondent also gave the litigation history between the petitioner and the respondent. The respondent has cited judgments passed by the Supreme Court titled as **Associated Cement Co. Ltd. V Keshvanand**, (1998) 1 SCC 687; **M/s Ajeet Seeds Ltd. V K. Gopala Krishnaiah**, Criminal Appeal No.1523/2014 decided on



16.07.2014; **M/s BLS Infrastructure Limited V M/s Rajwant Singh & Others**, Criminal Appeal Nos.657-664/2023 decided on 01.03.2023; and the judgment of this Court in CRL.L.P. 172/2016 titled as **Rajeev Kumar V Gagan Makhija** decided on 07.08.2019.

14. A Coordinate Bench of this Court in **Koutons Retail India Ltd. V Pramod Prasad Gupta & Anr.**, W.P. (Civil) No. 8917/2007 decided on 29.09.2008 observed as under:-

13. To my mind, this is also a case where the petitioner appears to have been a victim of the inaction, negligence and misdemeanor of its counsel, who has conducted himself in a very unprofessional manner in this case. The conduct of the counsel is also clear from the observations made by the Learned Labour Court in its orders. Furthermore, the fact remains that even though the award against the petitioner was passed in the presence of its counsel, he did not inform his client, i.e. the petitioner, about this. It is noteworthy that as soon as it came to the petitioner's knowledge that the said award has been passed against it, steps were taken by it to get all the relevant records of the cases from its counsel. In addition, the petitioner even filed a complaint against its counsel with the Bar Counsel of India.

14. Under the circumstances, I am of the opinion that the petitioner should not be made to suffer for the inaction and negligence of the petitioner's counsel. It deserves to be given a fair opportunity to present and defend its case.

15. Consequently, impugned award dated 3.3.2006 in ID No.145/2005 is set aside, the matter is remanded to the Labour Court for decision afresh after issuing the requisite notice to all parties and proceeding with the matter de novo from there. The Labour Court is directed to deal with and



decide the matter within six months from today.

15. The present complaint pertains to cheques total amounting to Rs.89,00,000/- which were dishonoured due to insufficient funds. There is no dispute by the respondent regarding the fact that the said cheques were signed and issued by him and also regarding the dishonour of the cheques on the ground 'Funds Insufficient'. The petitioner is stated to be a qualified doctor. The petitioner was under the impression that he would be adequately represented by his previous counsel. The various orders passed by the trial court are reflecting that the petitioner and his counsel were not diligent in the prosecution of the complaint. However, mere negligence either on the part of the petitioner or his counsel in prosecution of the complaint should not be a ground for not restoring the complaint. The petitioner cannot be allowed to be suffer due to the negligence of his previous counsel.

16. After considering all facts, the impugned order dated 07.12.2016 passed by the trial court is set aside and the complaint bearing CC no.22916/2016 titled as **Dr. Alok Chopra V Dhruv Verma** is ordered to be restored to its original number before the trial court subject to the cost of Rs.25,000/- to be paid by the petitioner to



the respondent on the next date of hearing before the trial court.

17. The petitioner and the respondent are directed to appear in person before the trial court on 15.01.2024 at 2:30 p.m. for further directions.

18. Copy of this judgment be sent to the concerned trial court for information and compliance.

**DR. SUDHIR KUMAR JAIN
(JUDGE)**

DECEMBER 19, 2023
SK/AM