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2024:PHHC:111950

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CRM-A-87-2024 (O&M)
DECIDED ON: 14.08.2024

PARDEEP KUMAR

.....APPLICANT/APPELLANT

VERSUS

SONU

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Rajesh Bansal, Advocate
for the applicant/appellant.

SANDEEP MOUDGIL, J (ORAL)

CRM-3055-2024

Prayer in this application is for condonation of delay of 194 days in filing the accompanying application.

In view of the assertions made in the application, the same is allowed subject to all just exceptions. Delay of 194 days in filing the accompanying application is condoned.

The application stands disposed off.

CRM-A-87-2024

1. The present application under Section 378(4) Cr.P.C. has been preferred by Pardeep Kumar-complainant seeking leave to appeal against the order dated 02.05.2023 passed by Judicial Magistrate Ist Class, Shahabad, District Kurukshetra whereby, the complaint bearing No. 330/2019 dated 30.08.2019 filed under Sections 138/142 of Negotiable Instruments Act, 1881 has been dismissed in default on account of non-appearance of the applicant/appellant.

2. Brief facts of the case are that the applicant/appellant filed a complaint against the respondent alleging therein that on 26.03.2018, the respondent demanded Rs.9 lacs from the applicant/appellant for taking the land on lease, for which the appellant agreed to pay the same being in cordial relation and on the next day i.e. 27.03.2018, the respondent received Rs.9 lacs from the applicant/appellant and a writing in this regard was written on the stamp paper, which was taken by the respondent at the house of the applicant/appellant and after understanding the contents of the same, in the presence of witnesses, the respondent signed the same and promised to pay the said amount within a year. Later on, the mother of the respondent also agreed to sell her land measuring 6 kanals to the applicant/appellant vide agreement to sell dated 23.05.2018. The respondent paid Rs.2 lacs through RTGS to the applicant/appellant on 14.12.2018 and on 04.07.2019, the respondent issued a cheque bearing No.005866 of Rs.7 lacs of Axis Bank Ltd. for the discharge of the above said legal liability. That on 10.07.2019 applicant/appellant presented the said cheque in his account of Oriental Bank of Commerce, Sahabad but the same was dishonoured with an endorsement "Funds Insufficient" vide Bank Memo dated 11.07.2019. Thereafter, applicant/appellant approached the respondent personally and demanded the amount of cheque of Rs.7,00,000/- but the respondent had been delaying the payment on the one pretext or the other and on that account, applicant/appellant has issued a legal notice dated 29.07.2019 to the respondent/accused through his Advocate but he refused to receive the same, knowingly and intentionally to avoid his legal liability.

3. Learned counsel for the petitioner submits that vide order dated 30.08.2019, the trial Court has summoned the respondent for commission of offence punishable under Section 138 of Negotiable Instruments Act and thereafter the

notice issued to the respondent/accused has been received back with the report of refusal and on that account, non-bailable warrants were issued by the trial Court and the respondent did not appear before the trial Court, was declared 'proclaimed person' vide order dated 15.12.2021 passed by learned Judicial Magistrate Ist Class, Shahabad, District Kurukshetra. He further contends that on 30.11.2022, the respondent/accused surrendered himself before the trial Court and was released on regular bail and the notice was issued to the applicant/appellant for his presence on 17.02.2023 and thereafter on 17.02.2023 fresh notice was issued to the applicant/appellant for 02.05.2023 as the notice issued to him was not received back. Thereafter, trial Court vide order dated 02.05.2023 dismissed the complaint in default due to non-appearance of the applicant/appellant, which is impugned before this Court.

4. Heard.

5. The trial Court has dismissed the complaint in default due to non-appearance of the applicant/appellant and his counsel and the applicant/appellant has not received any notice for his appearance before it as he was out of India on 13.04.2023 and returned back on 12.05.2023 and had no knowledge regarding the hearing of the complaint on 02.05.2023.

6. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the Court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of

petition, the personal appearance of the party is not only required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the Court to inquire as to what is happening in the Court with regard to his case nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. The problem that agitates is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative.

7. In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the complaint for want of prosecution without appreciating that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same.

8. In view of the discussions made hereinabove, the order dated 02.05.2023 is set aside and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law.

9. Ordered accordingly.

(SANDEEP MOUDGIL)
JUDGE

14.08.2024
Poonam Negi

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