



249 **IN THE HIGH COURT OF PUNJAB AND HARYANA**
AT CHANDIGARH

CRM-A-873-2023

Date of Decision: 12.11.2024

M/s Goyal Food Products

...Appellant

vs.

Sun Industries and Others

...Respondents

Coram : **Hon'ble Mr. Justice N.S.Shekhawat**

Present : Mr.Arpandeep Narula, Advocate
 for the appellant.

 Mr. Vinod Kumar, Advocate for
 Mr. Rajesh Lamba, Advocate
 for respondent No.2.

N.S.Shekhawat J.

1. The applicant has moved the present application under Section 378 (4) read with Section 482 of Cr. P.C for grant of special leave to appeal against the impugned order dated 18.01.2023 passed by the Court of Judicial Magistrate Ist Class, Gurugram, whereby the complaint filed by the applicant/appellant was ordered to be dismissed in default for want of prosecution.

2. The brief facts of the case are that the applicant/complainant had filed a complaint under Section 138 of the Negotiable Instruments Act (hereinafter referred to as the "Act") against the respondent by alleging that the respondent had issued a cheque bearing No.817804, dated 24.08.2017 for an amount of Rs.5,41,532/- drawn on his account No.2647261015143 to the applicant in discharge of his legal liability and on presentation of the said cheque by the applicant to his banker, the same was returned with the memo



“Insufficient Funds”. Thereafter, the complaint was filed in the Court of Chief Judicial Magistrate, Gurugram by the applicant. The case was listed before the Trial Court on several dates and the applicant was reached on each and every date of hearing. However, on 07.01.2023, the Court had issued notice to the witnesses for 13.01.2023. Even though the case was adjourned to 13.01.2023, however, the applicant and his counsel wrongly heard the same to be 30.01.2023. In fact, words “13th of January” were wrongly heard and understood as “30th of January”. Due to this, the applicant/appellant nor his counsel appeared before the Trial Court on 13.01.2023 and on 13.01.2023, the Trial Court adjourned the case to 18.01.2023. On 18.01.2023, the applicant and his counsel could not appear before the Trial Court. Even, the notice could not be served on the applicant and his counsel for 18.01.2023. Consequently, on 18.01.2023, the Trial Court dismissed the case in default for want of prosecution. Learned counsel for the applicant had relied upon the law laid down in the matter of **“Shakti Industrial Corporation Vs. Ridaus Auto Components Private Limited and other”, 2015(8) RCR (Criminal) 457; “Santosh Devi Vs. Mahinder Singh”, 2015(2) R.C.R. (Criminal) 192 and “The Associated Cement Co. Ltd. Vs. Keshvanand”, 1998 (1) RCR (Criminal) 309.**

3. I have heard the learned counsel for parties and perused the record carefully.

4. From the record, it is apparent that the case was listed on 07.01.2023 and was adjourned to 13.01.2023. However, the applicant and his counsel had wrongly noted the date of hearing to be on 30.01.2023. Ultimately,



neither the applicant nor his counsel could appear before the Trial Court on 13.01.2023 and 18.01.2023 and the case was dismissed in default for want of prosecution.

5. Section 256 of Criminal Procedure Code is extracted below:-

*“256. **Non-appearance or death of complainant-** (1) if the summons has been issued on complaint, and on the day appointed for the appearance of the accused, of any day subsequent thereto to which the hearing may be adjourned, the complainant does not appear, the Magistrate shall, notwithstanding anything hereinbefore contained, acquit the accused, unless for some reason he thinks it proper to adjourn the hearing of the case to some other day.*

Provided that where the complainant is represented by a pleader or by the officer conducting the prosecution or where the Magistrate is of opinion that the personal attendance of the complainant is not necessary, the Magistrate may, dispense with his attendance and proceed with the case.

(2) The provisions of sub-section (1) shall, so far as may be, apply also to cases where the non-appearance of the complainant is due to his death.”

6. The aforesaid provision of law clearly lays down that the Magistrate has discretion to dismiss the complaint if on any date fixed for hearing of the complaint, the complainant fails to appear in the Court. However, if the Magistrate finds that there was some valid reason for non-appearance of the complainant or the presence of the complainant was not required during the Court proceeding, he can very well exercise his discretion to



adjourn the complaint. While exercising the jurisdiction under Section 256 Cr.P.C., the Court has to take into consideration that the powers vested in it have to be exercised judiciously and in the interest of justice. In the present case, the appellant could not appear on one date i.e. on 18.01.2023 and the case was dismissed in default by the Trial Court in a hurry.

7. In view of the above discussion, the instant appeal succeeds and the impugned order dated 18.01.2023 passed by the Court of Judicial Magistrate Ist Class, Gurugram is set aside and the complaint is ordered to be restored to its original number. The Trial Magistrate is directed to proceed with the complaint from the stage, when it was dismissed in default. The Registry of this Court is directed to inform the Trial Court in this regard.

8. Since it is an old case, the trial Court is directed to decide the main case on merits expeditiously, preferably within a period of six months from today.

9. Pending applications, if any, are also disposed off, accordingly.

10. The trial Court record be sent back.

11. Registry is directed to do the needful.

(N.S.SHEKHAWAT)
JUDGE

12.11.2024
hitesh

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No