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

CRM-M-10753-2024

Date of decision: 29.02.2024

Sony Mony Developers Pvt. Ltd.

...Petitioner

Versus

M/s India Bulls Commercial Credit Limited and Another

...Respondents

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Mr. Sandeep Arora, Advocate for the petitioner.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/accused under Section 482 Cr.P.C. for quashing of order dated 02.11.2023 passed by the Court of Judicial Magistrate, Ist Class, Gurugram (Annexure P-6) vide which the application filed by respondent No.2 for its substitution in place of respondent No.1 was allowed without even seeking reply to said application in complaint case NACT-21005-2019 titled M/s India Bulls Commercial Credit Limited Vs. Sony Mony Developers Private Limited under Section 138 NI Act.

2. The counsel for the petitioner submits that impliedly by passing the impugned order Annexure P-6, the learned trial Court has given permission to the complainant to amend the complaint, which is not permissible after the stage of cognizance, as has been held by Hon'ble Supreme Court in S.R. Sukumar Vs. S. Sunnaad Raghuram (2015) 9 SCC 609. The counsel for the petitioner further submits that even otherwise the aforesaid impugned order was passed without granting any opportunity of

hearing to the petitioner and thus, deserves to be set aside.

3. I have considered the submissions made by counsel for the petitioner.

4. From the perusal of impugned order Annexure P-6 dated 02.11.2023, it is evident that application for substitution of complainant dated 02.11.2003 was allowed by the learned trial Court just on the basis of the contents of the said application, without giving any opportunity to the petitioner to file reply to the same and even no opportunity of hearing was provided to the petitioner before passing of the impugned order. The impugned order is a non speaking order and is not sustainable in eye of law and deserves to be set aside.

5. In light of the above, without expressing any opinion on the merits of the case as well as application moved for substitution of complainant, the present petition is allowed and the impugned order is set aside with direction to the trial Court to pass a fresh order in accordance with law, on the application filed by the complainant seeking substitution of the party, after seeking reply of the petitioner and giving opportunity of hearing to the petitioner.

6. Keeping in view, the nature of the order being passed, no notice is required to be issued to the respondents. However, if they feel dissatisfied with this order they may move an application to recall the same.

29.02.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No