



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

**CRM-M-43021-2018
DECIDED ON: 30.08.2024**

AJAY ARORA

.....PETITIONER

VERSUS

RAJIV KATARIA

.....RESPONDENT

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL.

Present: Mr. Supriay Arora, Advocate for
Mr. Rajesh Narang, Advocate
for the petitioner.

Mr. Sidharth Sabaria, Advocate &
Ms. Pragati Kumar, Advocate
for the respondent.

SANDEEP MOUDGIL, J (ORAL)

1. The jurisdiction of this Court under Section 482 Cr.P.C. has been invoked for setting aside the impugned order dated 31.07.2017 (Annexure P-5) passed by the learned Trial Court vide which complaint case bearing No.NI Act 146/2015 dated 29.05.2013 titled as "Ajay Arora Vs. Rajiv Kataria", filed by the complainant/petitioner, under section 138/141 of Negotiable Instruments Act, 1881, has been dismissed for want of prosecution.

2. It has been contended on behalf of learned counsel for the petitioner that the non-appearance of the petitioner before the trial Court is neither intentional nor willful but on account of the fact that he noted wrong date as 31.08.2017 instead of 31.07.2017. He further submits that the petitioner was pursuing the matter very sincerely and cautiously and was appearing on each and every date and on 31.07.2017, the matter was listed for securing the presence of the accused, whereby the complaint has been dismissed in default

on account of non-appearance of petitioner and consequently, the application

dated 04.08.2017 (Annexure P-6), seeking restoration of the main case was filed by the petitioner and the same was also dismissed as withdrawn on 16.07.2018 (Annexure P-8) by the trial Court.

3. Heard.

4. The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant. When the petitioner became aware of the fact that his complaint had been dismissed in the absence of his advocate, he moved an application in the trial Court for recalling the order dismissing his complaint. This application was rejected by the court below on the ground that the case was called several times since morning but neither complainant nor anybody on behalf of him came present before the Court. It was further observed that the complainant could have moved an application seeking personal exemption from appearance but he failed to do so and even his counsel has not come present to pursue the matter.

5. 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 not 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.

6. In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the application for restoration of complaint 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. Thus, by restoring the present complaint this Court is of the view that neither of the parties would suffer prejudice rather it would help in facilitation of the case to secure the ends of justice.

7. As a consequence the impugned orders dated 31.07.2017 (Annexure P-5) passed by learned Sub Divisional Judicial Magistrate, Kalka are hereby set aside and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law after providing due opportunities to both the sides and adducing evidence.

8. Petition stands disposed of. Ordered accordingly.

30.08.2024

Mani Kumar

(SANDEEP MOUDGIL)
JUDGE

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