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IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CRM-M-48456-2017

Date of decision: 24.01.2024

Rakesh

...Petitioner

Versus

Krishan Kumar

...Respondent

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH

Present: Ms. Shanika Khurmi, Advocate for
Mr. Manish Soni, Advocate for the petitioner.

Mr. Rohit Joshi, Advocate for
Mr. Anoop K. Yadav, Advocate for the respondent.

KARAMJIT SINGH, J. (ORAL)

1. The present petition has been filed by the petitioner/complainant under Section 482 Cr.P.C. seeking setting aside of order dated 02.12.2016 Annexure P-3 passed by the Court of Judicial Magistrate, Ist Class, Gurugram whereby the criminal complaint number 2796 dated 08.07.2015 (Annexure P-1) titled as Rakesh Vs. Krishan Kumar under Section 138/142 of Negotiable Instruments Act was dismissed in default for want of prosecution.
2. The brief facts of the case are that the petitioner filed criminal complaint under Section 138/142 of NI Act against respondent on account of dishonor of cheque worth Rs.20 lacs bearing number 653642 dated

02.04.2015. On completion of preliminary evidence, the respondent was summoned to face trial under Section 138 of NI Act and thereafter, respondent put in appearance and notice of accusation was served to him on 11.04.2016 to which he pleaded not guilty and claimed trial. Then the case was fixed for evidence of the petitioner. On 02.12.2016, the complaint was dismissed in default for want of prosecution vide impugned order Annexure P-3, as the parties failed to appear in the trial Court on that date.

3. The counsel for the petitioner submits that prior to the passing of the impugned order, the petitioner was regularly appearing in the trial Court. That the counsel for the petitioner noted down wrong date as 12.12.2016 whereas the actual date fixed was 02.12.2016 and thus, the petitioner as well as his counsel failed to appear before the trial Court on 02.12.2016 and consequently, the impugned order was passed by the trial Court. The counsel for the petitioner further submits that the learned trial Court dismissed the complaint in a hasty manner just on the ground of single default committed by the petitioner. The counsel for the petitioner further submits that interest of justice demand that the impugned order be set aside and the criminal complaint be restored.

4. The present petition is resisted by the counsel for the complainant who submits that there was no illegality or perversity in the impugned order as the same was passed in accordance with law on account of absence of the petitioner on the date fixed before the trial Court.

5. Taking into consideration the facts of the present case, it would be too harsh on the petitioner to non suit him merely on the ground of his non appearance on one date before the trial Court. There is nothing on the

record to show that non appearance on the petitioner on the date fixed before the trial Court was intentional. The Courts are meant to do substantial justice. In the present case, petitioner has sought penal action against the respondent on the ground of dishonor of cheque worth Rs.20 lacs. In the given circumstance, interest of justice demands that the petitioner should be given proper opportunity to prove his case by leading evidence.

6. For the foregoing reasons, the impugned order Annexure P-3 dated 02.12.2016 passed by the Court of Judicial Magistrate, Ist Class, Gurugram is set aside and the complaint filed by the petitioner is restored to its original number. The parties are directed to appear before the trial Court on 05.02.2024 for further proceedings.

7. Accordingly, the petition is allowed.

24.01.2024

Yogesh

(KARAMJIT SINGH)
JUDGE

Whether speaking/reasoned:-
Whether reportable:-

Yes/No
Yes/No