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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CRL.REV.P. 214/2024 & CRL. MA 4939/2024**

SH BAIJU KANT JHAPetitioner

Through: Mr. V.N. Jha and Ms. Manisha Bhati,
Advocates.

versus

SH NAVEEN KUMAR JHARespondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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01.10.2024

1. By way of the present petition, the petitioner seeks setting aside of the order dated 09.12.2022 passed by the learned Judicial Magistrate First Class (NI Act), South East District, Saket Court, New Delhi in Complaint Case No.9569/2017 titled 'Baiju Kant Jha v. Naveen Kumar Jha' filed under Section 138 of the Negotiable Instrument Act, 1881 (hereinafter, referred to as the "*NI Act*") whereby the petitioner's complaint was dismissed in default for non-prosecution.
2. Noticing the averments made in the present petition, notice of the petition was directed to be issued to the respondent and he has been duly served, however, there is still no appearance on behalf of the respondent.
3. The petitioner being the complainant has preferred the underlying complaint under Section 138 of the NI Act against the respondent.
4. A reading of the impugned order would show that the complaint was dismissed on account of the absence the complainant/petitioner and his



counsel on 09.12.2022.

5. Learned counsel for the petitioner submits that since the filing of the complaint, the petitioner has duly appeared on each and every date, except on 09.12.2022, when he could not appear before the learned Trial Court as he had gone to his native place in Bihar and on account of professional exigency, his counsel also could not appear. It is further stated that the default was only for one date.

6. The petition is accompanied by the daily order-sheets of the Trial Court and a reading of the same would show that the petitioner had appeared on each and every date, except on 09.12.2022. A perusal of the impugned order would further reflect that the case was called repeatedly on the said date and eventually the complaint was dismissed for non-prosecution.

6. Considering the fact that the petitioner has been diligently pursuing his complaint except for one date, the petition is allowed and the aforesaid complaint is restored to its original number.

7. The matter is directed to be listed before the Trial Court on 24.10.2024.

8. The Trial Court shall ensure that the aforesaid complaint on being listed, the respondent is duly served.

9. The petition is disposed of in above terms alongwith pending application.

10. A copy of this order be communicated to the concerned Trial Court.

MANOJ KUMAR OHRI, J

OCTOBER 1, 2024/rd