

IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

2025:PHHC:057837



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CRM-M-23134-2025 (O&M)
Date of decision:01.05.2025

M/s Banarsi Dass B.K.O. & another

... Petitioners

Vs.

M/s Aggarwal Coal Co. & another

... Respondents

CORAM: HON'BLE MRS. JUSTICE SUKHVINDER KAUR.

Present: Mr. Ashwani Bhardwaj, Advocate for the petitioners.

...

SUKHVINDER KAUR, J.

1. Instant petition has been filed by the petitioner/firm for setting aside order dated 24.04.2025 (Annexure P-1) passed by the learned Judicial Magistrate 1st Class, Ludhiana, whereby evidence of the accused has been closed by order.

2. Present complaint under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter to be referred as N.I. Act) has been initiated by the complainant with the submissions that the accused were having business dealings with the complainants as the accused used to purchase goods from the complainants from time to time on credit basis through various bills. It was alleged that an amount of Rs.19,14,245/- was outstanding against the accused upto 31.10.2017. The complainants made repeated demands to the accused to make the abovesaid payment. In lieu of

the same, the accused issued cheque bearing No.921495 on 09.10.2018 for an amount of Rs.19,14,245/-. The complainant presented the same before the Punjab National Bank, Sarabha Nagar, Ludhiana for its encashment but the same was dishonoured with the remarks 'Account Closed' vide memo dated 11.10.2018.

3. Thereafter, complainant served a registered legal notice dated 25.10.2018 upon the accused through his counsel to the make such payment within a period of 15 days from receipt of the said notice. Upon receiving the said legal notice, the accused filed its reply on 10.11.2018 through his counsel but accused failed to pay the said amount. Hence, the present complaint.

4. During the pendency of the complaint, various opportunities were provided to the petitioner to lead his evidence but he failed to conclude the same. Thereafter, while passing the impugned order on 24.04.2025 (Annexure P-1), evidence of the petitioner was closed by the trial Court 'by order'. Aggrieved against the said order, the petitioner has knocked the doors of this Court.

5. Learned counsel for the petitioners has contended that the impugned order is illegal, arbitrary and contrary to the settled principles of criminal trial resulting in miscarriage of justice. He has further contended that learned trial Court closed the defence evidence mechanically without giving a clear last and final opportunity. In support of his contention, he has placed reliance upon a decision of Hon'ble Supreme Court of India in **Kalyani Baskar Vs. M.S. Sampooranam, (2007) 2 SCC 258**, wherein it was held that 'denial of opportunity to

produce defence witnesses without justifiable cause amounts to violation of fair trial. Procedural rules are meant to advance justice and not defeat it.” He has argued that learned trial Court has passed a non-speaking and cryptic order without appreciating the fact that the accused was not at fault or negligent and such order seriously prejudices the substantial rights of the petitioner. He has submitted that the petitioner is ready and willing to produce his defence witnesses on the very next date. He has urged that in case he is not granted an opportunity to lead his evidence, then the same would cause irreparable loss to him and therefore, he seeks indulgence of this Court for grant of one effective opportunity to lead his entire evidence.

6. I have heard learned counsel for the petitioner at length and have perused the pleadings on record.

7. Perusal of the impugned order reveals that the petitioner in spite of availing numerous effective opportunities for concluding his evidence, failed to conclude his evidence and then it was closed 'by order' by learned trial Court vide the impugned order dated 24.04.2025 (Annexure P-1).

8. Though there is no infirmity in the impugned order, yet it will be appropriate, if in the interest of justice if one effective opportunity is given to the petitioner to conclude his entire evidence. Therefore, the impugned order is set aside. The trial Court is directed to grant one effective opportunity to the petitioner to conclude his entire evidence at his own responsibility subject to payment of costs of Rs.5,000/- to be deposited with DLSA, Ludhiana.

9. Disposed of in the aforesaid terms.

(SUKHVINDER KAUR)
JUDGE

01.05.2025
harjeet

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| 1. Whether speaking/reasoned? | Yes/No |
| 2. Whether reportable? | Yes/No |