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

+ CRL.L.P. 85/2022

PEC LIMITED

.....Petitioner

Through: Mr. Krish Kalra, Adv.

versus

PHULCHAND EXPORTS P LTD & ORS.

.....Respondents

Through: Ms. Natasha Dalmia, Ms. Anisha Jain  
and Ms. Shambhavi Singh, Adv. for  
R-1 & 3.

**CORAM:**

**HON'BLE MR. JUSTICE JASMEET SINGH**

**ORDER**

**20.01.2025**

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**CRL.L.P. 85/2022**

1. This is a leave to appeal seeking setting aside of the judgment dated 17.11.2021 passed by the learned Metropolitan Magistrate (NI-ACT)-02, Patiala House Court, New Delhi in CC No. 48123/2016 titled as "*PEC Limited vs. Phulchand Exports Pvt. Ltd.*", wherein the complaint filed by the petitioner under Section 138 of the NI Act against the respondent was dismissed under Section 204 (4) Cr.P.C. for not taking steps to serve the respondent.
2. Mr. Kalra, learned counsel for the petitioner states that the petitioner was tracing the fresh address of respondent and hence could not file the process fee as the fresh address was not available.
3. After 23.08.2021, the next date of hearing was 17.11.2021 on which the complaint was dismissed.
4. A perusal of the aforesaid fact shows that non-filing of the address on 17.11.2021 was only on the ground that the petitioner was seeking to find the fresh address of the respondent. There has been no inordinate delay on



part of the petitioner.

5. For the said reasons, I am of the view that the leave to appeal must be granted.

6. Consequently, leave to appeal is granted to the petitioner.

**CRL.A. /2025 (TO BE NUBMERED)**

7. This is an appeal challenging the judgment dated 17.11.2021, wherein Section 138 of the NI Act complaint filed by the appellant was dismissed in view of section 204 (4) Cr.P.C.

8. A perusal of the order dated 23.08.2021 shows that appellant was required to file fresh address of the respondent. Since the appellant could not find the fresh address, the complaint was dismissed on the next date of hearing i.e. 17.11.2021.

9. The address of the respondents continues to be the same address and in the present petition, the respondents have been served at the same address and are appearing.

10. Issue notice.

11. Ms. Dalmia, learned counsel for the respondent Nos. 1 and 3 accepts notice.

12. Mr. Kalra, learned counsel for the appellant states that since respondent No. 2 has died, the respondent No. 2 is deleted. He further states that respondent Nos. 4 & 5 may also be deleted. His statement is taken on record and respondent Nos. 2, 4 and 5 are deleted from the array of parties.

13. Respondent Nos. 1 and 3 have been served and they are appearing through their counsel.

14. I have heard learned counsel for the parties.

15. In the present case there has been no inordinate delay on the part of



the appellant. On 23.08.2021, the appellant was required to furnish fresh address of the respondents and on 17.11.2021, the appellant despite the best efforts could not find the fresh address of the respondents. Thus, on 17.11.2021, the complaint was dismissed. The fact that the respondent continues to be at the same address shows that there was no default on part of the appellant.

16. I am of the view that the endeavour of the Court should be to hear and decide the complaint on merits rather than on technicalities.

17. For the said reasons, I am inclined to allow the appeal. However, the appellant has consumed valuable judicial time as well as that of the respondent. The appeal is allowed subject to costs. Both the parties shall appear before the concerned ACMM on 31.01.2025 at 10:00 am, wherein the matter would be assigned to competent court and no fresh notice will be issued. The appellant shall pay Rs. 50,000/- as cost to the counsel for respondent Nos. 1 & 3 and Rs. 50,000/- with Delhi High Court Bar Association within 4 weeks from today and will file proof of payment with the learned MM.

18. The proof of costs paid shall be placed on record and in case the same is not done, the file shall be put up before the Court.

19. In view of above, the appeal is allowed and disposed of.

**JASMEET SINGH, J**

**JANUARY 20, 2025/NG**

*Click here to check corrigendum, if any*