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

+ **CRL.L.P. 72/2021 & CRL.M.A. 12268/2021**

SANTOSH KUMAR

.....Petitioner

Through: Mr. Praveen Gaur, Advocate through
VC.

versus

M/S R.R. CONSTRUCTIONS & ANR.

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

21.01.2025

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CRL.M.A. 12266/2021 (*u/S 5 r/w Section 14 of Limitation Act, 1963*)

1. By way of present Application, the Applicant/Petitioner seeks condonation of 1247 days' delay in filing the Appeal/Petition.
2. For the reasons and grounds stated in the Application, the Application is allowed, the delay of 1247 days' in filing the Appeal/Petition is hereby condoned.
3. Accordingly, the Application is disposed of.

CRL.L.P. 72/2021

4. The present Petition under Section 372 of the Code of Criminal Procedure, 1973 has been filed on behalf of the Petitioner against the Order dated 08.02.2018 *vide* which the Complaint under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act, 1881"*) filed on behalf of the Petitioner/Complainant got dismissed for



non-prosecution.

5. It is submitted on behalf of the Petitioner that there was another Complaint Case No. 3955/2017 was pending between the parties and the Petitioner had filed an Application dated 27.09.2017 for tagging of the said Complaint along with another Complaint Case No. 7062/2017. However, the Petitioner was under the impression that the two said cases have been tagged. When in fact, the Application dated 27.09.2017 had not been considered.

6. Consequently, on 08.02.2018, the Petitioner/Complainant was not able to appear and the Complaint got dismissed for non-prosecution.

7. Reliance has been placed on Balbir vs. State of Haryana and Ors., 2000 (1) SCC and The Associated Cement Co. Ltd. vs. Keshvanand, 1998 (1) SCC 687.

8. The Respondents were served and were being represented through counsel.

9. Learned counsel for the Petitioner/Complainant submits that a Counter Reply had been filed on behalf of the Respondents, though the same is not on record.

10. Present none for the Respondents.

11. Opportunity has already been given to address the arguments.

12. **Submissions heard and record perused.**

13. From the record, it is evident that the Complaint under Section 138 of the N.I. Act, 1881 was dismissed for non-prosecution *vide* the impugned Order.

14. In Hindustan Domestic Oil & Gas Co. (Bombay) Limited & Ors. vs State & Ors. 2012 (4) JCC 2310, it was observed that an order dismissing



the complaint for non-prosecution or in default, which is made the subject matter of the revision, cannot be equated with “revision petitions” that are filed on substantive grounds or touch on the merits. Courts have recognized difference between orders which are procedural and substantive orders.

15. In the case of Grindlays Bank Ltd. vs. Central Government Industrial Tribunal and Ors. 1980 (Supp) SCC 420, it was thus held that an Order dismissing the complaint in default or non-prosecution did not touch upon factual or legal merits of the complaint. It is a reflection on or about the conduct of the complainant in proceedings before the Court and the opinion formed by Court about said conduct. Such Orders if they did not reflect and take into consideration merits of the case or complaint, would not require Notice to the opposite side when examined in a Revision Petition. Such Orders are not prejudicial to other side as they did not reflect and take into consideration merits and demerits of the allegations. When a Revision Petition is filed against an Order dismissing a complaint for non-prosecution or in default and same is allowed, it is not an Order that causes prejudice to opposite side, as there was no application of mind or reflection on merits whatsoever. This distinction has to be thus, kept in mind.

16. For the reason that the Complainant/Petitioner was in a confusion about the date and as has been explained by him in his Petition, as well as considering the reason given for non-appearance, the impugned Order dated 08.02.2018 is hereby set aside and the Complaint Case No. 7062/2017 is restored to its original number.

17. Parties are directed to appear before the concerned Court of learned Metropolitan Magistrate on 03.02.2025.

18. Accordingly, the present Petition along with pending Application is



disposed of.

NEENA BANSAL KRISHNA, J

JANUARY 21, 2025
S.Sharma