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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CRL.L.P. 379/2022**

SHRI RAM MEHAR KAUSHIKPetitioner

Through: Mr. Prag Chawla, Advocate

versus

SHRI PANKAJ MATHURRespondent

Through: Mr. Puneet Kumar and Ms. Ranu Arora, Advocates (through VC)
Mr. Puneet Kumar, Mr. Vipul Kumar,
Mr. Rakesh Kumar, Ms. Renu Aroa
and Ms. Taniya, Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE JASMEET SINGH

ORDER

% **09.01.2025**

CRL.M.A. 14944/2022 (for delay)

1. This is an application seeking condonation of delay of 30 in filing the appeal.
2. For the reasons stated in the application, the delay of 30 days in filing the appeal is condoned.
3. The application stands disposed of.

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4. This is a petition seeking leave to appeal against the impugned order 21.09.2019 passed by the learned MM (NI Act-08), South West District, Dwarka Court, New Delhi in Criminal Complaint Case No. 24666/2019 titled as ***“RamMehtar Kaushik v. Shri Pankaj Mathur”*** under Section 138 of Negotiable Instrument Act, 1881 wherein the learned Trial Court dismissed the said complaint on the ground of non-prosecution and non-appearance.
5. It is stated by Mr. Chawla, learned counsel for the petitioner that the



petitioner as well as his counsel have regularly been appearing before the learned Trial Court. Some orders prior to the impugned order dated 21.09.2019 shows that the petitioner/counsel was regularly appearing.

6. He has handed over the certified copies of the order which shows that on 05.12.2018 the counsel for the complainant was present, on the next date i.e. 11.2.2019 the counsel for the complainant was present, on the next date i.e. 23.04.2019 the complainant was present in person and the matter was transferred to the concerned Court of P.S. Janakpuri. Thereafter the complainant as well as the counsel lost the track of the new Court and could not appear on subsequent dates.

7. A perusal of the same shows that the petitioner and his counsel were regular in prosecuting the Complaint but only on account of transfer to the new Court, they lost the track.

8. Notice was issued to the respondent on 15.05.2023 and the respondent had been appearing in the past.

9. For the reasons as noted, I am satisfied that the non appearance of the learned counsel and the petitioner was neither intentional nor deliberate but for the reason of the Court having been transferred. In addition, Court notice issued to the complainant i.e. the petitioner was also unserved. In this view of the matter, the leave to appeal is granted.

10. Mr. Kumar, learned counsel appears through V.C. and opposes the petition.

11. For the reasons already noted above, the leave to appeal is granted.

Crl. A. 2025 (To be numbered)

12. The Registry is directed to number the appeal and the appeal is taken up for hearing.



13. In the present case, the appellant had filed a complaint under section 138 of Negotiable Instrument Act, 1881 against the respondent. As already recorded above, the appellant/counsel was regularly appearing in Court and only on account of transfer of the Court, the appellant/counsel lost the track and hence the said Complaint was dismissed for non-prosecution.

14. The endeavour of the Court should be to hear and adjudicate on merits rather than on technicalities. The appellant had been appearing in the past and was diligently prosecuting the complaint, but only on account of change of the Court, the Complaint was dismissed for non-prosecution. The non-appearance on 21.09.2019 or the date earlier was neither intentional, deliberate nor malafide. It was due to a bonafide error.

15. However, the respondent has been put to hardship on account of non-appearance of the complainant/counsel. For the said reasons, the appeal is allowed and the Complaint filed by the appellant against the respondent is restored to its original number and position subject to payment of costs of Rs.10,000/- to the counsel for the respondent.

16. List the Complaint before the concerned CMM on 07.02.2025 prior to which the costs shall be paid or on that date.

17. The certified copies of the orders handed over in Court are taken on record.

JASMEET SINGH, J

JANUARY 9, 2025/j

Click here to check corrigendum, if any