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

+ **CRL.L.P. 118/2017**

M/S SHASHVAT ADVERTISING PVT LTD.Petitioner

Through: **Mr. Nishant Kishore and Mr. Anurag
Atulya, Advs.**

versus

**M/S B & R BRASSA COLLECTION PVT LTD
& ORS.**

.....Respondents

Through: **None.**

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

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15.05.2025

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1. The present petition under Section 378(1) Cr.P.C. seeking leave to appeal has been filed on behalf of the Petitioner.
2. Respondents have been served but today none is present.
3. It is submitted that there was prevailing circumstances on account of which learned counsel for the appellant was unable to appear on the given date. For the reasons stated, the leave petition is allowed.

CRL.A. _____/2025 *(to be number by the Registry)*

4. The appeal under Section 378(1) Cr.P.C. has been filed on behalf of the Appellant against the final Order dated 29.07.2016 vide which the Complaint Case No.2314/15 under Section 138 NI Act and was dismissed for non-appearance and the Respondents were acquitted.
5. It is submitted that Complaint under Section 138 NI Act has been filed by the Appellant against the Respondents in respect of cheque dated 18.03.2013 in the sum of Rs.1,60,000/-, which got dishonoured on account



of insufficiency of funds.

6. The Summons were issued against the Respondents on 05.07.2014, but the Respondents failed to appear and bailable warrants were issued.

7. Thereafter, pursuant to the directions of learned District Judge, South-East District, Saket Courts, New Delhi, the case was transferred to the Court of another learned MM (NI Act)-03, South-East District, Saket Courts, New Delhi. The matter was listed for determination of territorial jurisdiction on 29.07.2016 and for filing of a formal affidavit of place of appellant's bank account, but the same got dismissed in default.

8. It is submitted on behalf of the Complainant that he as well as the counsel was unable to appear as they were appearing before the National Consumer Disputes Redressal Commission (NCDRC). A proxy counsel had appeared and sought pass-over as the authorised representative had gone out of station for some official work, but was expected to reach and appear before the learned Trial Court. The Authorised Representative was struck in traffic jam between Mohinuddinpur and Modi Nagar on his way back to Delhi and it took additional 4.5 hours to clear the jam, which happened on account of furious crowd blocking the Hapur-Modinagar Road Crossing.

9. It is submitted that the Appellant intends to pursue his Complaint, which was dismissed for non-prosecution.

10. The Appeal is therefore, filed to set aside the impugned judgment dated 29.07.2016 and the Complaint be restored for determination of adjudication, on merits.

11. Respondents have been served and they have also put in appearance, but have failed to appear today.

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



13. As has been submitted by learned counsel for the appellant, on 29.07.2016, the matter was fixed for consideration of an Affidavit to be filed on behalf of the complainant, to determine the jurisdiction having regard to the location of the bank accounts of the Appellant. However, neither the counsel appeared nor the appellant. The only explanation given is that they both were appearing before the NCDRC, while the Authorised Representative was struck in traffic jam.

14. Pertinently, as per the Order dated 29.07.2016, none had appeared on behalf of the Complainant on previous dates, i.e. 08.12.2015 and 10.03.2016, for which there is no explanation. The explanation given is only for 29.07.2016, on which date the Complaint got dismissed for non-prosecution.

15. It is pertinent to observe that according to the Appellant, an affidavit was required to be filed on behalf of the Authorised Representative, who ascertains the jurisdiction, but apparently no Affidavit has found its way to the Trial Court Record.

16. Though, much can be said about the complainant's conduct, but it cannot be overlooked that the Complainant was dismissed for non-prosecution and non-appearance. It is in the interest of justice that the matter be decided on merits.

17. In the case of 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. [*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 complaint 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.

18. Considering the totality of the circumstances and the explanation given, the Appeal is hereby allowed and the impugned Order is hereby set aside, subject to deposit of cost of Rs.25,000/- with Delhi High Court Advocates Welfare Trust. The matter be listed before the learned Trial Court on 26.05.2025. The Parties are directed to appear before the learned MM, who may, thereafter, consider the Complaint on merits.

19. The Appeal is accordingly, allowed and disposed of along with pending Application(s).

NEENA BANSAL KRISHNA, J.

MAY 15, 2025/R