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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CRL.L.P. 561/2019, CRL.M.A. 29011/2023, CRL.M.A. 29585/2023
CRL.M.A. 2929/2024

SAKET CITY HOSPITAL PRIVATE LIMITEDPetitioner
Through: Mr. Ravikesh K.Sinha, Advocate.

versus

M/S GLOBAL EQUIPMENTS HOSPITALITY PRODUCTS PVT.
LTD. & ORS.Respondents
Through: Mr. Rajesh Chugh and Mr. Pankaj
Pareek, Advocates for R-2 & 3.

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

% **ORDER**
15.04.2025

1. Learned counsel has appeared for Respondent Nos.2 & 3.
2. Respondent Nos.1 & 4 have been duly served through Publication in the newspapers Statesman (English) and Veer Arjun (Hindi) and Dainik Savera (Jammu) on 04.06.2024, despite which the Respondent Nos.1 & 4 have failed to appear.
3. Criminal Leave Petition under Section 378 of the Code of Criminal Procedure, 1973 (*hereinafter referred to as "Cr.P.C."*) has been filed on behalf of the Petitioner to challenge the Order of Acquittal dated 16.08.2018 passed by the learned M.M, Saket Courts in CC No. 632614/2016, under Section 138 of the Negotiable Instruments Act, 1881 (*hereinafter referred to as "N.I. Act"*).
4. It is submitted that the learned M.M. in the impugned Order



observed that the Court Notice has been issued to Petitioner/Complainant which was received back unserved. If, the summons were unserved, then the Appellant could not have appeared before the Court. Therefore, the dismissal of Petitioner's Complaint on grounds of non-appearance and non-prosecution was unwarranted and the said Complaint deserves to be entertained on its merits.

5. Considering the grounds sought for seeking Leave to Appeal, the Leave Petition is allowed. Leave granted and Appeal be registered.

6. Pending Application(s) also stand disposed of.

CRL.A./2025 (to be numbered)

7. Criminal Appeal under Section 378 Cr.P.C has been filed on behalf of the Petitioner to challenge the Order of Acquittal dated 16.08.2018 in CC No.632614/2016 under Section 138 N.I.Act by learned M.M.

8. **Brief facts** are that the Petitioner/Complainant had filed a Complaint under Section 138 N.I.Act in October, 2013 on account of dishonour of cheque in the sum of Rs.4,59,000/- dated 08.05.2013 issued by Respondent No.1 Company which was dishonoured on account of *insufficiency of funds*.

9. The case was being tried in Delhi but on account of the judgment of the Apex Court it got transferred to the Gurgaon Court however, subsequently it was transferred back to Delhi by the learned M.M *vide* Order dated 03.10.2015. However, the Complainant was never served with the Notice of the Complaint and it eventually ended into an Order of Acquittal *vide* Judgment dated 16.08.2018.



10. *Learned counsel for the Petitioner* submits that he had been regularly enquiring about the status of the case from the office of the Court but was not able to trace the details. It is further submitted that the Notice sent by the Court was not received by the Complainant or the counsel, as is evident from the impugned Order dated 16.08.2018.

11. It is, therefore, submitted that the Complainant was unable to appear as he was not served with the Complaint after it got transferred to Saket Courts.

12. It is prayed that the impugned Order dated 16.08.2018 be set aside and the trial be directed to be heard on merits.

13. *Learned counsel on behalf of Respondent No.2 and 3* submits that the Gurgaon Court had transferred this case to Saket Courts on the statement of the Complainant himself. For him to say that he was not aware of the transfer or could not trace out the details of the case, is totally not tenable. It is, therefore, submitted that there is no infirmity in the impugned Order and the present Petition is liable to be dismissed.

14. **Submissions heard and record perused.**

15. Essentially, the Complaint has got dismissed on account of non-appearance of the Complainant. The explanation given is that he was waiting for a Court Notice to be served for three years and because no Notice got served, the Petition got dismissed.

16. Though the explanation may not be very convincing, but considering that the Complaint has got dismissed on the ground of non-appearance, the impugned Order is hereby set aside subject to cost of Rs.50,000/- out of which Rs.25,000/- be paid to the



Respondent and Rs.25,000/- be deposited in Advocates' Welfare Fund.

17. The parties are directed to appear before the learned CJM, South District on 02.05.2025 who may mark it to the concerned learned Judicial Magistrate.

NEENA BANSAL KRISHNA, J

APRIL 15, 2025

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