

**IN THE COURT OF HARNAM SINGH THAKUR, SESSIONS
JUDGE, GURGAON.**

Computer ID case No. : 114 of 2016
Criminal Revision No. : 64 of 2016
Date of Institution : 02.03.2016
Date of Decision : 30.05.2016

M/s Global Infonet Distribution Pvt. Ltd. through its authorized representative Shri Surjeet Ratnawat, D-98, Okhla Industrial Area, Phase-I, New Delhi-110020.

Previously at: 241, Ghalib Apartment, Parwana Road, Pitampura, Delhi-110034.

... Revisionist/Complainant

Versus

1. State
2. M/s Polixel Security Systems Pvt. Ltd. through its Director, D-7, Dhawandeep Apartment, 6 Jantar Mantar Road, New Delhi-110001.
3. Mr. Surinder Lunia, Director/Authorized Signatory, M/s Polixel Security Systems Pvt. Ltd. through its Director, D-7, Dhawandeep Apartment, 6 Jantar Mantar Road, New Delhi-110001

Also at : 5010, Phase-IV, DLF, Gurgaon-122011 (Haryana).

4. Mr. Gurdial Singh Khandpur, Director/Authorised Signatory, M/s Polixel Security Systems Pvt. Ltd. through its Director, D-7, Dhawandeep Apartment, 6 Jantar Mantar Road, New Delhi-110001.

Also at : House No.2901, Phase-7, Mohali-160059 (Punjab).

5. Mr. Kamal Kumar Sharma, Director/Authorized Signatory, M/s Polixel Security Systems Pvt. Ltd. through its Director, D-7, Dhawandeep Apartment, 6 Jantar Mantar Road, New Delhi-110001.

Also at : D-97, G.F. Sohna Road, Sector-49, South City-II,
Gurgaon-1220018.

... Respondents/Accused

Criminal revision under Section 397 of the Code of Criminal Procedure, 1973 against the order dated 26.11.2015 passed by the Court of Ms. Meenakshi Yadav, the then learned Judicial Magistrate Ist Class, Gurgaon, vide which criminal complaint under Section 138 readwith Sections 141 and 142 of the Negotiable Instruments Act, 1881 of complainant was dismissed in default for want of prosecution.

Present : Shri Samit Kunwar, counsel for revisionist.
Shri L.S. Yadav, Public Prosecutor for respondent No.1/State

JUDGMENT:

This criminal revision petition is directed by the revisionist/ complainant against the order dated 26.11.2015 passed by the Court of Ms. Meenakshi Yadav, the then learned Judicial Magistrate Ist Class, Gurgaon, vide which criminal complaint under Section 138 readwith Sections 141 and 142 of the Negotiable Instruments Act, 1881 of complainant was dismissed in default for want of prosecution.

2. Brief facts leading to filing of the present revision petition are that complainant (**hereinafter referred to as the revisionist**) filed complaint under Section 138 readwith Sections 141 and 142 of the Negotiable Instruments Act, 1881 (**hereinafter referred to as the 'Act'**) on the grounds that accused No.2, 3 and 4 (**hereinafter referred to as respondents No.3 to 5**) on behalf of accused No.1 (**hereinafter referred to as respondent No.2**) approached the revisionist for supply of Samsung LFD's and promised that prompt payment shall be made against the supply of goods. On the assurance of respondents No.3 to 5, revisionist supplied Samsung LFD's to respondent No.2. In order to make partial payment of the aforesaid legally enforceable debt, respondents No.3 to 5 issued a cheque bearing No.092790 dated 22.12.2014 of ₹41,68,125/- drawn on HDFC Bank, A-12, The Shopping

Mall, DLF, Qutub Enclave, Phase-I, Gurgaon in favour of the revisionist. The said cheque on presentation for encashment was dishonoured due to the reason "Payment Stopped by Drawer". Legal notice was issued by the revisionist and still respondents failed to make the payment of the cheque in question and as such complaint before learned Trial Magistrate was filed.

3. On presentation of complaint, learned Trial Magistrate adjourned the same to 3.7.2015 for recording of preliminary evidence of revisionist. However, on 3.7.2015, learned counsel for revisionist stated that as per the Negotiable Instruments (Amendment) Ordinance 2015 which came into force on 15.6.2015, complaint under revision is not maintainable within the jurisdiction of the learned trial Court as bank where the revisionist maintains the account is situated outside the jurisdiction of Gurgaon and as such the learned trial Court adjourned the case to 15.9.2015, 2.11.2015 for consideration on the plea of transfer and then to 26.11.2015, the date when neither authorized representative of the revisionist nor its counsel appeared before the learned Trial Magistrate and the complaint was dismissed in default for want of prosecution vide impugned order.

4. Being aggrieved of passing of the said order dated 26.11.2015, revisionist approached this court by way of present revision on the ground that non-appearance of the complainant and its counsel the said date was neither intentional nor deliberate but due to bonafide reasons as the authorized representative of the revisionist as well its counsel wrongly noted the next date of hearing as 14.12.2015 instead of 26.11.2015.

5. I have heard Shri Samit Kunwar learned counsel for revisionist, Shri L.S. Yadav, learned Public Prosecutor for respondent No.1/State and have perused the record of case file.

6. It is argued by learned counsel for the revisionist that no party is going to suffer loss if the impugned order is set aside as on 26.11.2015 the case was fixed for consideration qua transfer of the complaint under revision

to the Court within whose local jurisdiction the branch of the bank where the revisionist/complainant maintains the account is situated and no effective proceedings were to be conducted on the said date. Non-appearance of the revisionist and its counsel on the said date was neither intentional nor deliberate but due to bonafide reasons. It is further contended that the ends of justice as well as fair and equitable trial demand that the accused/respondents should not escape from clutches of law merely due to non appearance of the complainant that too for a just and reasonable cause.

7. After hearing learned counsel for revisionist and careful perusal of learned Trial Court record, I am of the considered view that revision in hand is maintainable. The case was at the stage of consideration on the plea of complainant to transfer the complaint to the Court within whose local jurisdiction the branch of the bank where the complainant maintains the account is situated and personal appearance of revisionist/complainant was not required for conducting any effective proceedings by the learned trial Court. More so, learned Trial Court record reveals that statement of revisionist was not recorded on the date when the complaint was filed, therefore, presence of revisionist/ complainant could have been exempted by the learned trial Court. No prejudice would be caused to the respondents/accused if the complaint is restored. It was first default on the part of the revisionist in appearance before the learned trial Court but was bonafide and due to noting wrong date of hearing duly supported by an affidavit of learned counsel for revisionist placed on record. It is settled law that a case should not be dismissed in default merely for non appearance of complainant on one date. Here reliance can be placed upon authorities of law in case **Danvanti Mutual Benefits Limited Vs. State of Haryana and another, 2008(1) RCR (Criminal) (P&H) 772, Neh Pal Sharma Vs. Bijender Singh 2009(4) Civil Court Cases (P&H) 677 and Purushotam Mantri Vs. Vinod Tandon alias Hari Nath Tandon 2008(4) Civil Court Cases (P&H) 064.** In the last mentioned authority, it has been held that it

would be too harsh on the petitioner to non suit him merely for his non appearance on one date; restoration of the complaint was ordered. Similar law is laid down by the Hon'ble Punjab and Haryana High Court in CRM-A-832-MA-2014 titled as "M/s A.K. Manpower Services Vs. M/s Gromet India Pvt. Ltd. and another" decided on 14.1.2016.

8. As a sequel to discussion and for the reasons recorded here-in-above, it is concluded that impugned order suffers from patent illegality and is set aside by accepting the revision petition. Complaint is restored to its original number subject to deposit of cost of ₹500/- (Five hundred) with District Legal Services Authority, Gurgaon. Trial Court file alongwith a copy of this judgment be sent back for disposal in accordance with law. Revisionist/complainant through its learned counsel is directed to appear before the learned Trial Court on 06.06.2016. Revision file be consigned to record room after due compliance.

Announced in open Court :
30th May, 2016
(ashok)

Sd/-
(Harnam Singh Thakur)
Sessions Judge, Gurgaon.

Note : This judgment comprises of 5 pages and all the pages have been checked and signed by me.

Sd/-
(Harnam Singh Thakur)
Sessions Judge, Gurgaon,
30.5.2016.

Present : Sh. Samit Kunwar, counsel for revisionist.

Arguments heard. For pronouncement of judgment to come up after lunch break.

Sd/-
(Harnam Singh Thakur)
Sessions Judge, Gurgaon,
30.5.2016.

Present : Sh. Samit Kunwar, counsel for revisionist.

Vide judgment of even date, present criminal revision has been allowed. Learned trial Court record alongwith a copy of judgment be sent back and revision file be consigned to record room after due compliance.

Announced in open Court :
30th May, 2016

Sd/-
(Harnam Singh Thakur)
Sessions Judge, Gurgaon.