

2025:PHHC:041803



**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

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**CRM-A-1578-2023 (O&M)
Decided on:25.03.2025**

Mahesh Kumar Gupta

...Petitioner

Versus

Surya Bhan

...Respondent

Coram : Hon'ble Mr. Justice Rajesh Bhardwaj

Present: Mr. Naresh Chander, Advocate,
for the appellant.

Rajesh Bhardwaj, J. (Oral)

CRM-10614-2025

Prayer in the present application is for pre-ponment of the main case bearing CRM-A-1578 of 2023 from 02.07.2025 to an early date.

For the reasons mentioned in the application, which is supported by an affidavit of the applicant-appellant, the same is hereby allowed and the date of the main case is pre-poned from 02.07.2025 to today and the case is taken up for hearing accordingly.

CRM-47134-2023

Prayer in the instant application is for condonation of delay of 63 days in filing the main appeal.

For the reasons mentioned in the application, which is supported by an affidavit of the applicant-appellant, the same is hereby allowed and the delay of 63 days in filing the main appeal is condoned.

CRM-A-1578-2023

The instant application, filed under Section 378(4) Cr.P.C., which is supported by an affidavit of the applicant-appellant, is hereby allowed.

Leave is granted.

Office is directed to list the present case as an appeal and return the file immediately.

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CRA-AS-47-2025

1. The present appeal has been filed against the order dated 15.05.2023 passed by the learned Judicial Magistrate 1st Class, Chandigarh, vide which complaint filed by the appellant under Section 138 of the Negotiable Instruments Act, 1881 (for short “the Act”) was dismissed for want of prosecution.

2. Learned counsel for the appellant submits that the appellant filed a complaint under Section 138 of the Act before the learned JMIC, Chandigarh. He led preliminary evidence and after having satisfied with it, learned JMIC passed summoning order against the respondent-accused, who did not choose to appear intentionally and ultimately was declared as a proclaimed offender vide order dated 06.10.2018. Thereafter, the file was consigned to record room with a condition to be taken up as and when the accused is arrested or himself surrenders or the complainant furnishes his list of properties. However, after a period of 5 years, the matter was taken up when the respondent-accused filed an application for grant of bail, who was granted bail on 16.02.2023 and the notice was also ordered to be issued to the present appellant-complainant for appearance as well as for evidence. However, the appellant-complainant, in the interregnum period, changed his residence and remained unaware about the status of his complaint. He submits that due to his unawareness, the appellant could not appear before the learned Magistrate, who dismissed his complaint for want of prosecution vide order dated 15.05.2023, which has been assailed by the appellant in the present appeal.

3. Learned counsel for the appellant submits that it is apparent from the records that absence of the appellant or his counsel before the trial Court was fully unintentional and it was because of the facts and circumstances narrated here-in-before as the case was consigned to the record room after the accused having been declared as a proclaimed offender. He submits that being a monetary dispute, if the complaint filed by the appellant is not decided on merits, he would suffer an irreparable loss and injury.

4. After hearing learned counsel for the appellant and perusing the available record, I find merit in the present appeal. It is apparent that after filing the complaint, the appellant-complainant led preliminary evidence and after appreciating the same, the learned Magistrate passed the summoning

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order. However, the respondent-accused did not choose to put in appearance and, thus, was declared as a proclaimed offender vide order dated 06.10.2018 and the case was ordered to be consigned to record room. Thereafter, it was taken up only when the respondent-accused filed an application for grant of bail, which was granted and the notice was issued to the appellant-complainant. However, somehow the appellant-complainant remained unaware about the revival of his complaint as the same was consigned to record room after declaring the respondent-accused as a proclaimed offender. I do not find any reason for non-appearance of the appellant-complainant for pursuing his complaint once he had already led preliminary evidence and made out a case for summoning the respondent-accused and, thus, come to the conclusion that his non-appearance was unintentional and the non-decision of his complaint on merits would result into an irreparable loss and injury to him.

5. In view of the aforesaid facts and circumstances, the present appeal is hereby allowed, ordered dated 15.05.2023 passed by the learned JMIC, Chandigarh is set aside the complaint is ordered to be restored to its original number and the learned Magistrate is directed to proceed with the matter from the stage at which the case was dismissed for want of prosecution and decide it expeditiously as the matter belongs to the year 2017. Petitioner is directed to produce the copy of this order before the learned trial Court, who would issue notice to the respondent and proceed with the matter as per law.

March 25, 2025
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(Rajesh Bhardwaj)
Judge

Whether Speaking/Reasoned: NO/YES
Whether Reportable: NO/YES