

2025.PHHC:026971



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

**CRM-A-917-2023 (O&M)
DECIDED ON: 19.02.2025**

**CHOLAMANDALAM INVESTMENT AND FINANCE COMPANY
LTD**

.....APPLICANT

VERSUS

BHUPINDER SINGH AND ANOTHER

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE SANDEEP MOUDGIL

Present: Mr. Sandeep chopra, Advocate
 for the petitioner.

 Mr. Akhilesh Vyas, Advocate for the respondents.

SANDEEP MOUDGIL, J

CRM-28100-2023

 This is an application under Section 5 of the Limitation Act,
1963 for condonation of delay of 42 days in filing the appeal.

 For the reasons mentioned in the application, the same is
allowed and delay of 42 days in filing the appeal is hereby condoned.

CRM-A-917-2023

1. This appeal has been filed challenging the order dated
09.02.2023 whereby the complaint under Section 138 of NI Act filed by the
applicant against respondents, has been dismissed in default for want of
prosecution passed by the Judicial Magistrate 1st Class, Chandigarh.

2. It has been contended on behalf of learned counsel for the
applicant that earlier counsel namely Sandeep Chopra, Advocate had joined

the office of Advocate General, Punjab, therefore, the complaint in question was handed over to Mr. Mohit Sareen, Advocate, whose clerks had not properly noted the dates in the complaint in question before the trial Court, which resulted into dismissal of complaint for want of prosecution. He therefore, the non-appearance of the applicant before the trial Court is neither intentional nor willful but on account of the aforesaid fact. He further contends that the applicant was never issued any notice or any kind of intimation regarding her non-appearance in the Court and directly dismissed the complaint for want of prosecution.

3. Heard.

4. The trial Court has dismissed the complaint in the absence of the learned counsel for the complainant. When the applicant became aware of the fact that her complaint had been dismissed in the absence of the advocate for the applicant and he was never intimated about the same by his counsel. Observing the fact that the Trial Court had failed to apply its *judicious* mind and has just casually dismissed the case for want of prosecution by observing that the case was called for several times and nobody turned up, therefore, dismissed the complaint for want of prosecution, which is sufficient for this Court to infer that the Court below should have at least summoned the applicant and would have given a fair hearing so that either of the parties should not have suffered any prejudice and rather has adopted a very callous approach.

5. The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him,

pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of petition, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the Court to inquire as to what is happening in the Court with regard to his case nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. What is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. The problem that agitates is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative.

6. In view of the foregoing, discussion, it is held that the trial Court has adopted a very casual and pedantic approach while dismissing the complaint without appreciating that rules of procedure are handmade of administration of justice and the same are to be applied to enhance the cause of justice and not to defeat the same. Thus, by restoring the present complaint this Court is of the view that neither of the parties would suffer prejudice rather it would help in facilitation of the case to secure the ends of justice.

7. As a consequence the impugned order dated 09.02.2023 is set aside and the case is remanded back to the trial Court for adjudicating it afresh on merits as per law.

8. Petition stands disposed of. Ordered accordingly.

19.02.2025

Sham

(SANDEEP MOUDGIL)
JUDGE

Whether speaking/reasoned *Yes/No*
Whether reportable *Yes/No*