
(2014) 05 P&H CK 0167
In the Punjab And Haryana At Chandigarh
Case No : Crm-M-39968 of 2013

Manjinder Singh

APPELLANT

Vs

Karamjit Kaur

RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 05 P&H CK 0167

Hon'ble Judges : Mahavir Singh Chauhan, J

Bench : Single Bench

Advocate : D.S. Gurna, Advocate for the Appellant; G.S. Jaswal, Advocate for the Respondent

Judgement

Mahavir Singh Chauhan, J.—Petitioner is aggrieved by order dated 19.07.2013 passed by learned Judicial Magistrate Ist Class, Jagraon (for short "trial Court"), whereby his complaint u/s 138 of the Negotiable Instruments Act, 1881, has been dismissed in default.

2. On 22.03.2014, record of the learned trial Court was called for to ascertain if notice was served upon the complainant/petitioner for 19.07.2013 because he was not present on the previous date of hearing, i.e., 12.07.2013. However, in the trial Court record, copy of the notice issued for 19.07.2013 is not available. That being so, the assertion put up on behalf of the petitioner that he was not served for that day, has to be taken as correct.

3. Be that as it may, on 19.07.2013, no effective proceedings were to take place and the learned trial Court instead of dismissing the complaint in default ought to have probed the possibility of adjourning the matter to a future date.

4. In the similar circumstances, the Hon'ble Supreme Court of India in Associated Cement Co. Ltd. Vs. Keshvanand, and this Court in Dilawar Singh Vs. Pankaj Joshi and Another, and in Standard Corporation India Limited Vs. Kamblekar Ramesh, , have held that the order of dismissal for default should be

set aside and the complaint should be restored to its original number and stage.

5. Nothing to the contrary has been shown during the course of hearing.

6. In the circumstances, order dated 19.07.2013 passed by the learned trial Court is set aside and the complaint is restored to its original number and stage. However, in view of the fact that the petitioner did not appear on the previous two-three dates also and the respondent has been put to unnecessary harassment by making him to defend these proceedings, the restoration of the complaint shall be subject to payment of costs amounting to Rs. 5,000/-.

7. Trial Court record be returned.