

(2014) 05 P&H CK 0471
In the Punjab And Haryana At Chandigarh
Case No : CRM-A-742-MA of 2013 (O&M)

Small Industries Development Bank of India	APPELLANT
Vs	
M/s. Vasari India Private Limited and Another	RESPONDENT

Date of Decision : 19-05-2014

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2014) 05 P&H CK 0471

Hon'ble Judges : Rekha Mittal, J

Bench : Single Bench

Advocate : Deepender Singh, Advocate for the Appellant; Damanjit, Advocate for the Respondent

Final Decision : Allowed

Judgement

Rekha Mittal, J.—Challenge in this appeal is to the order dated 14.5.2013 passed by the Judicial Magistrate whereby the complaint filed by the appellant-bank u/s 138 of the Negotiable Instruments Act, 1881 (for short "the Act") has been dismissed for want of prosecution.

2. Counsel for the appellant submits that the appellant had been pursuing its remedy religiously without any default but due to an inadvertent mistake in noting down the date, the representative of the appellant-bank could not put in appearance on the date fixed i.e. 14.5.2013. It is further submitted that on that day, the proceedings were pending for securing presence of the accused through non-bailable warrants which were not issued by the Ahlmad of the Court on earlier date i.e. 27.4.2013. The last submission made by counsel is that the trial court did not advert itself if the presence of the complainant was required for progress in the proceedings or the same could be dispensed with keeping in view the facts and circumstances of the case in the light of judgment of Hon'ble the Supreme Court of India in Associated Cement Co. Ltd. Vs. State of M.P. and Others, .

3. Counsel for the respondent, on the contrary, submits that the respondents have already discharged their liability towards the cheque amount as the payment in regard thereof has been made. It is further submitted that no useful purpose would be served by continuation of the criminal proceedings in view of later developments.

4. In reply, counsel for the appellant has refuted the contention of counsel for the respondents in regard to payment of money or discharge of liability. It is further submitted that even otherwise, the respondents cannot escape their liability by payment of cheque amount during pendency of the proceedings.

5. I have heard counsel for the parties and perused the records.

6. Without going into disputed questions of fact in regard to payment of cheque amount or otherwise, it is an admitted position of the case that the learned trial court while dismissing the complaint in default did not advert itself if the presence of the complainant was necessary on the date on which the proceedings culminated in dismissal of the complaint which was being pursued by the complainant for the last few years. This apart, perusal of the zimni orders placed on record would make it evident that on 14.5.2013, the proceedings were pending for securing presence of the respondents (accused) through non-bailable warrants and the appellant had already filed the necessary process fee for issuance of process by the court. A serious prejudice is likely to be caused to the appellant in case the impugned order is allowed to sustain which is in complete violation of the observations made by Hon''ble the Supreme Court of India in The Associated Cement Co. Limited's case (supra).

7. In view of what has been discussed hereinabove, the appeal is allowed, the impugned order is set aside and the matter is remitted to the trial court for proceeding with the case from the stage the complaint was ordered to be dismissed for want of prosecution.

8. Parties are directed to appear before the trial court on 23.6.2014.