

(2006) 11 DEL CK 0239

In the Delhi High Court

Case No : Criminal Appeal No. 555 of 2006

Yoginder Kapil

APPELLANT

Vs

Sanjay Gupta

RESPONDENT

Date of Decision : 13-11-2006

Acts Referred:

Negotiable Instruments Act, 1881 (NI) — Section 138

Citation : (2009) 93 DRJ 356 : (2007) 146 PLR 30 : (2012) 1 RCR(Criminal) 691 : (2012) 1 RCR(Criminal) 691

Hon'ble Judges : S.N. Aggarwal, J

Bench : Single Bench

Advocate : K. Sunil, for the Appellant; Sanjiv Kumar, for the Respondent

Final Decision : Allowed

Judgement

S.N. Aggarwal, J.—Final arguments heard.

2. The appellant is aggrieved by dismissal of his complaint u/s 138 of N.I. Act for non-prosecution vide order passed by the Court below on 26.4.2005. The learned Counsel for the appellant has taken me through the proceedings of different dates before the Court below in order to show that his complaint was shuttling from the Court of Magistrate to the Court of Session and from the Court of Session to the Court of Magistrate before a date was finally given on 29.11.2004 for his evidence to be recorded on 26.4.2005. On 26.4.2005, an application for exemption from personal appearance of the complainant/appellant was moved before the Court below and his exemption was sought on the medical ground stating that on that day the Counsel had received an information that the appellant suddenly fell sick. This contention is supported by an affidavit filed by the petitioner. The learned Court below instead of granting exemption chose to dismiss the complaint in default for non-prosecution as the complainant could not produce his evidence on that day. I am of the view that in case the Court below was not convinced to grant exemption to the petitioner on the day his complaint u/s 138 of N.I. Act was dismissed in default, the minimum which was expected of

the Court below was to have adjourned the matter for complainant's evidence at least for one more date so that the lis brought before the Court below could have been examined on merits. I am further of the view that the technicalities should not block the road for justice between the parties. In the present case, the complaint was not decided on merits and it was simply dismissed in default for non-prosecution on the date complainant suddenly fell ill.

3. In view of the above, I am convinced with the reason given on behalf of the petitioner for not producing the evidence on the day the complaint was dismissed in default for non-prosecution. Hence this appeal is allowed and the impugned order is set aside. The case is remanded back to the trial Court for disposal of the complaint on merits in accordance with law. The parties are directed to appear before the trial Court for further directions at 2 p.m. on 27.11.2006. A copy of this order Along with trial Court record be sent back to the Trial Court forthwith.