

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of decision: February 13, 2020

+ **CRL.L.P. 849/2018**

SH. SANJEEV JAIN PROP.ASHOK COMPANY

+ **CRL.L.P. 855/2018**

SH. SANJEEV JAIN

+ **CRL.L.P. 4/2019**

SH. SANJEEV JAIN

..... Petitioner

Through: Mr. Nagender Yadav, Advocate

Versus

M/S. DESIGN POINT & ANR.

..... Respondents

Through: Mr. Alok Singh & Mr. Malay
Chand, Advocates

CORAM:

HON'BLE MR. JUSTICE BRIJESH SETHI

JUDGMENT

BRIJESH SETHI, J (oral)

CRL.L.P. 849/2018

CRL.L.P. 855/2018

CRL.L.P. 4/2019

Vide above captioned three petitions, petitioner is seeking quashing of order of 20th October, 2018 passed by the learned trial court, vide which his three complaints under Section 138 of the Negotiable
Crl.L.P.849/2018
Crl.L.P.855/2018
Crl.L.P.4/2019

Instruments Act, 1881 have been dismissed in default and for non prosecution. Learned counsel for petitioner further submits that non-appearance of petitioner before the learned trial court was neither deliberate nor intentional and in these circumstances, the petitions be allowed in the interest of justice.

Learned counsel appearing for the respondents has opposed this petition submitting that the impugned order suffers from no infirmity and these petitions deserve dismissal.

Heard.

The submissions advanced by learned counsel for the parties have been heard and in view of the fact that non-appearance of the petitioner was neither intentional nor deliberate, this Court finds it to be a fit case for grant of leave.

In view of aforesaid, these petitions are allowed and are directed to be registered as an appeal accordingly.

Crl.Appeal No.-----

Crl.Appeal No.-----

Crl.Appeal No.----- (Registry to assign numbers)

The above captioned three appeals have been preferred against the order dated 20th October, 2018 passed by the learned trial court vide which appellant's complaint under Section 138 of the Negotiable Instruments Act, 1881 have been dismissed for non appearance and non prosecution while observing that appellant had not been appearing before

the learned trial court and seems to be not interested in further prosecution of these complaints.

Learned counsel for the appellants submits that the finding returned by the learned trial court that appellant is not interested in pursuing his cases and that appellant/complainant was not present on the earlier date also, is erroneous because on the earlier date i.e. on 23rd May, 2018, appellant/ complainant's counsel had appeared before the learned trial court and rather respondents/accused had failed to appear and non-bailable warrants were issued for 29th October, 2018. It is further submitted by learned counsel for appellant that on 29th October, 2018 when appellant/complainant' counsel appeared before the trial court, he found that the matter was listed for 29th August, 2018 and thereafter on 20th October, 2018 and was dismissed in default for non appearance and non prosecution. It is further submitted by learned counsel for appellant that it is a case of wrong noting of date by appellant/complainant's counsel. Inadvertently the date was wrongly noted as 29th October, 2018 instead of 29th August, 2018. It is, therefore prayed that in the interest of justice, impugned order of 20th October, 2018 be set aside and appellant's complaints be restored.

On the other hand, learned counsel appearing on behalf of respondents has opposed these appeals on the ground that the impugned order suffers from no illegality or infirmity.

After hearing learned counsel for both the parties, this Court finds that non-appearance of appellant before the learned trial court on 29th August, 2018 as also on 20th October, 2018 was neither deliberate nor intentional but because of wrong noting of date by the learned counsel and for the lapse of appellant's counsel, appellant should not be made to suffer.

In view of the aforesaid, the appeal is allowed. The impugned order dated 20th October, 2018 passed by the learned trial court dismissing appellant's complaints under Section 138 of Negotiable Instruments Act, 1881 for non appearance and for non prosecution, is set aside and the complaints are restored to their original position.

Let the parties appear before the learned trial court on 18th March, 2020, for further proceedings in accordance with the law.

With directions as aforesaid, the above captioned three appeals stand disposed of accordingly.

(BRIJESH SETHI)
JUDGE

FEBRUARY 13, 2020

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