

32#\$~

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 131/2011

MITTHAN LAL MARKETING LTD ..... Petitioner

Through: Mr. Arun Kumar, Advocate.

versus

MEDIFIX PACKAGING INDUSTRIES ..... Respondent

Through: None.

**CORAM:**

**HON'BLE MS. JUSTICE MUKTA GUPTA**

**ORDER**

% 30.08.2011

**Crl. M.A. No. 2962/2011(Delay)**

For the reasons stated in the application, the delay in filing of the appeal is condoned.

Application is disposed of.

**CRL.L.P. 131/2011**

Despite Passover, none is present on behalf of the Respondent.

Learned counsel for the Petitioner states that the learned Trial Court has erroneously passed the order dated 25<sup>th</sup> October, 2010 dismissing the complaint of the Petitioner. The reason stated is non-appearance and dismissal in default whereas the Petitioner was present along with his counsel on the said date.

For the reasons stated in the petition, the leave to appeal is granted.

Petition stands disposed of.

*Crl.L.P. 131/2011*

*Page 1 of 4*

Signature Not Verified

Signing Date:13.08.2024 17:08:35  
Certify that the digital and physical file have  
been compared and the digital data is as per  
the physical file and no page is missing.

3

**Crl. Appeal No. 1104 /2011(To be numbered)**

1. Registry is directed to number the appeal.
2. The Appellant Company had filed a complaint under Section 138 of the Negotiable Instrument Act, 1881. During the pendency of the complaint the Complainant was regularly appearing before the Court. Vide order dated 12<sup>th</sup> February, 2008 this Hon'ble Court directed that the name of accused No. 4 Mrs. Sunita Vijay Deshpande be deleted. The complaint case filed by the Petitioner company was last transferred from the court of Ms. Twinkle Wadhwa, learned Metropolitan Magistrate, Tis Hazari Court, Delhi to the Court of Sh. Rakesh Kumar Nigam, learned Metropolitan Magistrate (Central). The Appellant was ordered to appear before the transferee court on 25<sup>th</sup> October, 2010. It is stated that the cause list of Sh. Rakesh Kumar Nigam, learned Metropolitan Magistrate showed that the said complaint was listed at Sl. No. 55. The Appellant along with his counsel appeared before the learned Metropolitan Magistrate, learned counsel for the accused No. 1 was also present on that date. The learned Metropolitan Magistrate was pleased to direct personal appearance of the accused No. 1 and issued non-bailable warrants against accused nos. 2 and 3. The complaint was then adjourned to 2<sup>nd</sup> February, 2011. On 2<sup>nd</sup> February, 2011 also the Appellant along with his counsel was present before the court when accused no. 1 along with his counsel

6

were also present. Learned Presiding Officer was on leave and the court was presided by the learned Link Magistrate. It is further stated that however, the cause list of the said date that is, 2<sup>nd</sup> February, 2011 did not list the case of the Appellant. The counsels for the Appellant and accused no. 1 made inquiries and after much effort it was revealed that the complaint case filed had been consigned to the record room.

3. Thereafter the Appellant filed an application on 2<sup>nd</sup> February, 2011 for recalling the file from the record room before the learned Magistrate Shri Rakesh Kumar. The application was fixed for hearing on 7<sup>th</sup> February, 2011 and the same was dismissed by the learned Presiding Officer stating that his Court had no jurisdiction to restore the complaint.

4. The counsel for the Appellant inspected the case file on 14<sup>th</sup> February, 2011 and it was for the first time on that date the Appellant learnt the reasons for dismissal of the complaint on 25<sup>th</sup> October, 2010. As per the impugned order the learned Metropolitan Magistrate dismissed the complaint as the complainant was not present and due to his non-appearance the accused was acquitted of the charges in the complaint.

5. Learned counsel for the Appellant contends that even the cause list dated 25<sup>th</sup> October, 2010 maintained by the learned Trial Court mentioned 2<sup>nd</sup> February, 2011 against item no. 55 however, the word 'RR' was also found

(2)

written. Thus the same is self-contradictory. It is further stated that before dismissing the complaint the court even did not issue notice to the Appellant and on inspection of the court case file it was revealed that the process filed since after 12<sup>th</sup> September, 2009 were not on court record. From the perusal of record, the noting of the Learned Metropolitan Magistrate that none appeared on behalf of the Appellant is wrong. Both the Appellant and his counsel were present on the said date and had submitted the process fee.

6. The order dated 25<sup>th</sup> October, 2010 dismissing the Complaint Case No. 3520/2010 is set aside. The complaint is restored to its original position.

7. Appeal stands disposed of.

8. The parties will appear before the learned Trial Court on 30<sup>th</sup> September, 2011.

  
MUKTA GUPTA, J.

**AUGUST 30, 2011**  
**'vn'**