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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CRL.L.P. 438/2011

CADBURY INDIA LTD

..... Appellant

Through: Ms. Surekha Raman, Advocate with
Mr. Varun singh and Mr. Gaurav Nair,
Advocates.

versus

VARSHA TRADING CORPORATION & ANR Respondents

Through: Mr. R.K. Chandiwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

31.08.2012

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Crl.M.A. 10877/2011 (condonation) in Crl.L.P. 438/2011

Keeping in view the fact that appellant had earlier filed a revision petition which had been dismissed with liberty to file the present appeal, delay in filing the present appeal is condoned.

Accordingly, the application stands allowed.

Crl.L.P. 438/2011

Keeping in view the fact that appellant's criminal complaint has been dismissed in default and for non-prosecution, the leave to appeal is allowed.

CRL.L.P. 438/2011

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CRL.A.

Registry is directed to number the appeal. With consent of the parties, present appeal is taken up for hearing.

Present appeal has been filed challenging the order dated 25th August, 2009 whereby the appellant's complaint being CC No. 9977/1 (Old No. 1175/1) has been dismissed in default and for non-prosecution.

After hearing the parties at length, it transpires that the appellant had filed two complaints being CC No.710/05 as well as the present complaint being CC No. 9977/1 (old No. 1175/1) against the respondents under Section 138 of the Negotiable Instruments Act, 1881.

During the period 2005 to 2007, both the complaints were taken up for hearing simultaneously. However, on 12th September, 2007 while CC No. 710/05 was adjourned for complainant's evidence to 01st May, 2008, the present complaint was adjourned in the miscellaneous list for 11th May, 2008 which was a Sunday.

Since both the parties were under the impression that both the complaints are being taken up simultaneously for hearing, none had appeared before the trial Court in the present complaint till its dismissal on 25th August, 2009.

It is pertinent to mention that though the trial Court had issued default notice to the appellant, but the same was never served.

Since a perusal of the order sheets of the trial Court record reveals that none had appeared for either of the parties before the trial Court between the year 2008 and 2009 and the appellant had not been served with default notice, this Court is of the view that appellant's complaint needs to be restored.

Consequently, present appeal is allowed and order dated 25th August, 2009 passed by the Metropolitan Magistrate, Tis Hazari Courts, Delhi in CC No. 9977/1 (Old No.1175/1) is set aside and the aforesaid complaint is restored to its original number.

Both the parties are directed to appear before the Additional Chief Metropolitan Magistrate, Tis Hazari Courts, Delhi on 17th September, 2012. The Additional Chief Metropolitan Magistrate is directed to mark the criminal complaint to the concerned court.

With the aforesaid observations, present appeal stands allowed.


MANMOHAN, J

AUGUST 31, 2012

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