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Court : Karnataka

Decided On : Oct-29-2014

Judge : Anand Byrareddy

Appeal No. : Criminal Appeal No. 336 of 2012

Appellant : Venkatesh

Respondent : M/s. Samruddha Builders and Developers and Another

Judgement :

(Prayer: This Criminal Appeal filed under Section 378(4) of the code of Criminal Procedure, 1973, by the advocate for the appellant praying to set aside the order dated 26.9.2011 passed by the XX Additional Chief Metropolitan Magistrate, Bangalore, in C.C. No. 19457/2007 - dismissing the complaint for non-prosecution.)

1. Heard the learned counsel for the appellant.

In the circumstances that the respondents are not shown to have been served, notice to the respondents in this case is dispensed with.

2. The appeal is considered for final disposal, having regard to the circumstances of the case. The appellant was the complainant before the court below alleging an offence punishable under Section 138 of the Negotiable Instruments Act, 1881 (hereinafter referred to as the NI Act', for brevity). The appellant's statement was

recorded by the court below and cognizance was taken. A case was registered and summons were ordered to the respondents - accused. Though process was paid from time to time, the service of summons was awaited. It was at this stage that since the complainant had failed to appear on a particular day, the court has thought it fit to dismiss the complaint for default.

3. Having regard to the law laid down and reiterated from time to time by this Court to the effect that a complaint ought not to be dismissed for default if the presence of the complainant was not necessary or warranted, the court ought not to have mechanically dismissed the complaint for default.

4. In the present case on hand, the writing in the order- sheet not being legible and clear, the statement of the counsel that there was nothing to be done by the complainant by being present in court and that the only requirement was furnishing of process which was also complied with and the Service of summons was to be reported to the court by the police, which was awaited and hence, there was no requirement of the presence of the complainant before the court on the said day and therefore, the dismissal of the complaint for default results in a miscarriage of justice. The contention is to be accepted.

The appeal is therefore summarily allowed. The order of dismissal is set-aside. The matter is remanded to the court below for further steps, in accordance with law.

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