

salary to the income of the deceased towards future prospects, where the deceased had a permanent job and was below the age of 40 years, should be made. The addition should be 30%, if the age of the deceased was between 40 to 50 years. In case the deceased was between the age of 50 to 60 years, the addition should be 15%. Actual salary should be read as actual salary less tax.

- (iv) In case the deceased was self-employed or on a fixed salary, an addition of 40% of the established income should be the warrant where the deceased was below the age of 40 years. An addition of 25% where the deceased was between the age of 40 to 50 years and 10% where the deceased was between the age of 50 to 60 years should be regarded as the necessary method of computation. The established income means the income minus the tax component.
- (v) For determination of the multiplicand, the deduction for personal and living expenses, the tribunals and the courts shall be guided by paragraphs 30 to 32 of *Sarla Verma* which we have reproduced hereinbefore.
- (vi) The selection of multiplier shall be as indicated in the Table in *Sarla Verma* read with paragraph 42 of that judgment.
- (vii) The age of the deceased should be the basis for applying the multiplier.
- (viii) Reasonable figures on conventional heads, namely, loss of estate, loss of consortium and funeral expenses should be Rs. 15,000/-, Rs. 40,000/- and Rs. 15,000/- respectively. The aforesaid amounts should be enhanced at the rate of 10% in every three years.

62. The reference is answered accordingly. Matters be placed before the appropriate Bench.

Order accordingly.

PUNJAB AND HARYANA HIGH COURT

Before: Hari Pal Verma, J.

Criminal Misc. No.A-120-MA of 2014 (O&M)

Decided on: 22.08.2017

M/s Videocon Industries Limited

Appellant

Versus

M/s Arihant Sales & others

Respondents

Present: Mr. Sanjay Verma, Advocate for the applicant-appellant.

**Negotiable Instruments Act, 1881 (26 of 1881), Section 138 --
Complaint u/s 138 of NI Act – Dismiss in default – Restoration of --
Though Ld. trial Court has rightly dismissed the complaint on account of
non-appearance of the complainant-appellant, however, considering the
fact that the complainant-appellant was appearing in the case regularly**

and on the relevant date, he had to go out of station and the case was fixed for appearance of the accused – Held, the complainant-appellant deserves opportunity to pursue his complaint, which was otherwise not adjudicated on merits -- Proceedings u/s 138 of the Act are more or less civil in nature, even though the same may have criminal bearing -- Consequently, the complaint filed by the applicant u/s 138 of the Act is restored for its decision as per merit.

(Para 9-11)

JUDGMENT

HARI PAL VERMA, J. –

1. This is an application filed under Section 378(4) CrPC for grant of special leave to appeal against order dated 4.10.2013 passed by learned Judicial Magistrate 1st Class, Gurgaon as well as order dated 14.11.2013 passed by learned Sessions Judge, Gurgaon.

2. On notice of motion having been issued, it has been reported that the same was duly served upon the respondents, however, no one has put in appearance on their behalf.

3. I have heard learned counsel for the applicant-appellant and perused the impugned orders with due care and circumspection.

4. The application is allowed.

5. Leave to appeal granted.

6. Office is directed to assign appeal number to the case.

7. The appellant has challenged the order dated 4.10.2013 passed by learned Judicial Magistrate 1st Class, Gurgaon, whereby the complaint filed by the appellant under Sections 138/141/142 of the Negotiable Instruments Act, 1881 (for short, "the Act") was dismissed in default, as also the order dated 14.11.2013 passed by learned Sessions Judge, Gurgaon, whereby the revision petition filed by the appellant against the order dated 4.10.2013, was also dismissed, holding that the same was not maintainable, as the respondents-accused have been acquitted in the complaint.

8. Learned counsel for the complainant-appellant has submitted that the appellant had filed the complaint in question against the respondents-accused under Section 138 of the Act on 14.2.2013, in which notice was duly issued. The appellant being the authorized representative of the appellant-firm, attended the Court proceedings regularly. However, on 4.10.2013, when the case was fixed for presence of the accused and as the appellant had to go to Himachal Pradesh to attend the marriage of his close relative, he had informed his counsel accordingly. But on the date fixed, his counsel could not get his presence marked and resultantly, the complaint was dismissed in default/for want of prosecution on 4.10.2013. The appellant filed revision petition against the order dated 4.10.2013, but the same was also dismissed, being not maintainable. Hence the present appeal.

9. Learned counsel for the appellant has argued that non-appearance of the appellant on 4.10.2013 before the trial Court was not intentional, rather his counsel wanted to file application for exemption from personal appearance, on

behalf of the appellant, but as the Presiding Officer was also on leave after lunch, the said application could not be filed. Moreover, the case was fixed for the presence of the accused and presence of the appellant was not necessary because of the stage of the complaint. However, the trial Court has dismissed the complaint in question on technicalities without appreciating the facts and circumstances of the case, especially when the appellant-complainant was otherwise appearing in the case regularly. At the most, the best course available for the trial Court was to adjourn the case.

10. Though learned trial Court has rightly dismissed the complaint on account of non-appearance of the complainant-appellant, however, considering the fact that the complainant-appellant was appearing in the case regularly and on the relevant date, he had to go out of station to attend marriage of his close relative and the case was fixed for appearance of the accused, this Court finds that the complainant-appellant deserves opportunity to pursue his complaint, which was otherwise not adjudicated on merits. Reference may be made to judgment of Himachal Pradesh High Court in the case of *M/s Bhagra Steels Sales Pvt. Ltd. Vs. Sunil Mohan*, wherein it was held that when presence of the complainant, on the relevant date, was not necessary, the complaint should not have been dismissed in default. Moreover, proceedings under Section 138 of the Act are more or less civil in nature, even though the same may have criminal bearing.

11. Since no one has put in appearance to oppose this petition, the argument put forward by learned counsel for the appellant remained unrebutted. Accordingly, the present appeal is allowed and order dated 4.10.2013 passed by Judicial Magistrate 1st Class, Gurgaon as well as order dated 14.11.2013 passed by learned Sessions Judge, Gurgaon are set aside. Consequently, the complaint filed by the applicant under Section 138 of the Act is restored for its decision as per merit.

12. Appellant is directed to appear before the Judicial Magistrate 1st Class, Patiala on 27.9.2017.

Appeal allowed.

PUNJAB AND HARYANA HIGH COURT

Before: Deepak Sibal, J.

RSA No. 660 of 2013

Decided on: 11.08.2017

Bhupinder Singh

Appellant

Versus

Sukhchain Singh

Respondent

Present: Mr. Tushar Sharma, Advocate, for the appellant.

A. Negotiable Instruments Act, 1881 (26 of 1881), Section 138 -- Pronote and Receipt – Allegation of forged and fabrication – Onus of proof -- Execution of the pronote and receipt through his own testimony as also through the depositions of the marginal witness duly proved -- To refute the above, the only evidence led by the appellant is his own bald statement – Once the respondent had discharged his onus, it was then