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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4679 of 2016

Date of Decision: 25.07.2016

TARAK JAIN

.....Petitioner

Vs

SHAMAN JINDAL

.....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Sandeep Wadhawan, Advocate
for the petitioner.

1. *Whether Reporters of local papers may be allowed to see the judgment ?*
2. *To be referred to the Reporters or not ?*
3. *Whether the judgment should be reported in the Digest?*

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed order dated 10.02.2016 passed by Additional Civil Judge, Senior Division, Ludhiana, whereby petitioner was proceeded against *ex parte* and opportunity to cross-examine the plaintiff witnesses was treated as 'Nil'. Petitioner has also assailed order dated 30.05.2016 whereby application for recall of the order dated 10.02.2016 was dismissed by the trial Court.

[2]. Shaman Jindal, proprietor of M/s Jindal Brothers (Regd.) filed suit for recovery against the petitioner/defendant.

On 10.02.2016, the case was fixed for cross-examination of

plaintiff witnesses namely Shaman Jindal and Anand Gopal, who were present in Court since morning. Learned counsel for the defendant appeared in court at about 3.00 p.m. and prayed for adjournment on the ground that he was busy in the court of Additional Sessions Judge, Ludhiana in some criminal case. Examination-in-chief of the witnesses was recorded on 04.09.2015 through their affidavits and the same were supplied to the learned counsel for the defendant. The witnesses were coming to trial Court, but their cross-examination was not done by the learned counsel for the defendant for one reason or the other.

[3]. Earlier on 25.01.2016, both the witnesses of the plaintiff were present in the trial Court and waited till 3.45 p.m. for their cross-examination by the learned counsel for the defendant, but learned counsel did not appear. The defendant was proceeded against *ex parte*. The case was adjourned to 29.01.2016 for *ex parte* evidence of the plaintiff.

[4]. On 29.01.2016, plaintiff closed the *ex parte* evidence and the case was further adjourned to 30.01.2016. At that stage, defendant filed an application for setting aside the *ex parte* proceedings. After hearing both the sides, *ex parte* proceedings were set aside vide order dated 03.02.2016 subject to payment of cost of Rs.3,000/- to be deposited in Free Legal

Aid Cell. It was made clear that in case cost was not deposited on the next date of hearing, the application filed on behalf of the defendant for setting aside the *ex parte* proceedings would be deemed to be dismissed and no further opportunity shall be granted to the defendant to cross-examine the witnesses of the plaintiff and case shall proceed in accordance with law. The case was further adjourned to 10.02.2016 for payment of cost and cross-examination of plaintiff witnesses.

[5]. On 10.02.2016, the witnesses of the plaintiff came present in the trial Court and were duly marked present. They remained present since morning, but the learned counsel for the defendant after appearing once, went back without saying anything and without conducting the cross-examination of the witnesses. The trial Court kept on waiting for him upto 4.25 p.m., but he did not turn up for cross-examining the plaintiff witnesses.

[6]. As per order dated 10.02.2016, the trial Court had no option, but to proceed *ex parte* against the defendant. The trial Court did not find any reason to give further time to the defendant to allow him to cross-examine the plaintiff witnesses. The defendant was proceeded against *ex parte* and the opportunity to cross-examine the plaintiff witnesses was treated as 'Nil'. The case was adjourned for *ex parte* arguments.

[7]. Thereafter petitioner/defendant filed an application dated 16.02.2016 for recalling of order dated 10.02.2016 on the ground that learned counsel for the defendant appeared in the case before lunch session, but the Presiding Officer was busy in some other case and after lunch session his counsel appeared and requested for adjournment to cross-examine the witnesses as his counsel was busy in old criminal case in the Court of Additional Sessions Judge, Ludhiana. However, the prayer was declined by the trial Court by noticing that neither the cost was deposited by the defendant, nor any effort was made to cross-examine the plaintiff witnesses, who remained present till 3.45 p.m. The trial Court also pointed out that on 10.02.2016, learned counsel for the defendant was indulged in speaking loudly in the Court, thereby disturbing the decorum of the Court.

[8]. The compassion was shown to the defendant, when *ex parte* proceedings after hearing him were set aside vide order dated 03.02.2016 subject to payment of cost of Rs.3,000/-. It was specifically brought to the notice of the defendant that in case cost was not deposited and the plaintiff witnesses were not cross-examined, the application for setting aside the *ex parte* proceedings shall be deemed to be dismissed and no further opportunity shall be granted to the defendant to cross-examine the witnesses and the suit shall proceed as per law. Apparently

the cost was not paid, nor the plaintiff witnesses were cross-examined. The trial Court was fully justified in passing the order dated 10.02.2016 and 30.05.2016.

[9]. No ground is made out to recall the order dated 10.02.2016 and the application has been rightly dismissed. Since the learned counsel for the defendant is appearing in the proceedings before the trial Court, therefore, the right of the defendant to continue with the proceedings shall be decided by the trial Court in accordance with law without being influenced by any observation made by this Court in dismissal of this revision petition.

[10]. In view of above, this revision petition stands dismissed.

July 25, 2016

Atik

Whether speaking/reasoned

(RAJ MOHAN SINGH)
JUDGE

Yes / No