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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH**

**RSA-204-2013 [O&M]**

**Date of Decision : February 4<sup>th</sup>, 2016**

M/s Kanti Lal & Company [Bombay]

.... Appellant

Versus

M/s Ram Lal Vijay Kumar Rice Mills, Mukerian

.. Respondent

**CORAM : HON'BLE MR. JUSTICE SHEKHER DHAWAN.**

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?

Present Mr. Ashish Chopra, Advocate,  
for the appellant.

Mr. Anish Setia, Advocate,  
for the respondent.

**SHEKHER DHAWAN, J.**

Present Regular Second Appeal is directed against the concurrent findings of both the Courts below, whereby suit filed by plaintiff-M/s Ram Lal Vijay Kumar Rice Mills, Mukerian [respondent herein] for recovery of Rs.3,22,449.65 as Principal amount and Rs.46,196/- as interest was decreed by the Court of first Instance vide judgment and decree dated 24.12.2007. The appeal filed by the defendant-Company was dismissed by learned Additional District Judge [Adhoc], Fast Track Court-II, Hoshiarpur vide judgment and decree dated 21.08.2012.

2. For the sake of convenience, parties are being referred to as per their status before the Court of first Instance.

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3. Learned counsel for the appellant mainly submitted that the appellant was proceeded against *ex-parte* on 21.12.2007 by the Court of first instance, as learned counsel representing the defendant could not appear before the Court below because of strike of lawyers. The said plea taken before the Court of first Appeal was also not considered. He further submitted that the Court of first instance decreed the suit just within three days of ordering the *ex-parte* proceedings against the defendant-appellant. There was no such time with the appellant for filing a revision because 22<sup>nd</sup> and 23<sup>rd</sup> December, 2007 were Saturday and Sunday respectively. The appellant was in Bombay and as such, he could not appear before the Court of first instance and the Court below has not considered this fact while passing the decree and the same facts were not considered appropriately by the Court of first Appeal. The same resulted into erroneous findings by both the Courts below causing grave injustice to the appellant. Prayer was made that the present appeal be accepted and the impugned judgments and decrees passed by the Courts below be set-aside.

4. Learned counsel for the respondent-plaintiff submitted that the appellant had not adduced any evidence and the evidence produced by the respondent remained un rebutted and unchallenged. More so, the plea taken by learned counsel for the appellant that because of the strike of lawyers, the defendant remained unrepresented, is no ground to set-aside the judgment and decree and the case has rightly been decided by the Courts below. The present appeal is without merit and the same be dismissed.

5. Having considered the submissions made by learned counsel for

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the parties, this Court is of the considered view that the facts are not disputed to the extent that the defendant had been appearing and contesting the suit by filing the written statement. Issues were framed by the Court of first instance on 18.7.2001. Thereafter, plaintiff's evidence was closed on 20.09.2007 and the case was fixed for 3.10.2007 for leading defendant's evidence. On 3.10.2007, there was no evidence of the defendant and the case was adjourned to 7.11.2007. On 7.11.2007, the case was adjourned to 7.12.2007. Again on 7.12.2012, since there was no evidence of the defendant present, the case was adjourned to 21.12.2007. On that date, defendant chosen not to appear before the Court and as such, the defendant was proceeded against *ex-parte* and the case was adjourned to 24.12.2007 for *ex-parte* arguments. On 24.12.2007, there was no representation on behalf of the defendant and the Court decided the civil suit in *ex-parte* proceedings.

6. The above sequence of events reveals that the defendant was given due opportunity to defend the case, but the defendant never led any evidence. There was no representation from the defendant on 21.12.2007 and again on 24.12.2007. In the light of this background, the contention of learned counsel for the appellant-defendant, that the decree was passed just within three days is factually incorrect because if for any reason, the defendant remained unrepresented on 21.12.2007, the defendant should have put in appearance before the Court on 24.12.2007, but unfortunately, the defendant chosen not to appear in the Court on 24.12.2007 as well. The circumstances being such, the Court decided the controversy on the basis of available evidence which was recorded in the presence of the defendant. The Court of first instance, after appreciating the evidence led

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by the plaintiff, decreed the suit for recovery. The appellant [who was defendant in the case] contested the appeal on merits as well and the Court of first Appeal after hearing both the sides held that the findings recorded by the Court of first instance are based on available evidence and there was no reason to set-aside the said findings.

7. As regards to the *ex-parte* proceedings having been initiated against the defendant, the Court of first Appeal rightly held that after availing three adjournments, the defendant failed to contest the suit and was proceeded against *ex-parte*. There was no justified grounds for the appellant-defendant for remaining away from the Court on 21<sup>st</sup> and 24<sup>th</sup> December, 2007. To that effect, the concurrent findings have been recorded by both the Courts below on the basis of facts and evidence available on the file and there are no ground to interfere and set aside the said findings. Such a view was taken by Hon`ble Supreme Court in **Ex-Capt. Harish Uppal Vs. Union of India and another, (2003) 2 SCC 45** and **K.John Koshy and others Vs. Dr. Tarakeshwar Prasad Shah, (1998) 8 SCC 624**. More so, there is absolutely no substantial question of law involved in the present appeal and hence, the same is not maintainable under Section 100 of the Code of Civil Procedure. Such a view was taken by Hon'ble Supreme Court in case **Santosh Hazari Vs. Purushottam Tiwari (Dead) by LRs., JT 2001(2) SC 407**.

8. In view of the above, the present Regular Second Appeal stands dismissed.

**(SHEKHER DHAWAN)**  
**JUDGE**

**February 4<sup>th</sup>, 2016**  
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