

In the High Court of Punjab and Haryana at Chandigarh

SAO No. 59 of 2015

Date of Decision: 7.4.2016

M/s Central Mills Store

---Appellant

versus

M/s Harries Engineers and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. O.P.Hoshiarpuri, Advocate
for the appellant**

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

Rekha Mittal, J.

The present appeal has been directed against orders dated 29.4.2010 and 7.1.2015 passed by the Civil Judge (Junior Division), Jalandhar and the Additional District Judge, Jalandhar respectively whereby application filed by the appellant/plaintiff for restoration of the suit dismissed under Order 9 Rule 8 of the Code of Civil Procedure (in short “CPC”) was dismissed and the appeal preferred against the order passed by the trial court was dismissed by the Additional District Judge.

Counsel for the appellant contends that the plaintiff-appellant filed a suit for recovery of Rs. 1.26 lakhs on account of defect in the goods supplied by the defendants/respondents. The suit was dismissed under Order 17 Rule 3 CPC vide judgment and decree dated 6.6.2006 but the

appeal preferred by the appellant was allowed by the first appellate court. It is further submitted that after the case was remitted to the trial court for decision afresh, the suit has been dismissed under Order 9 Rule 8 CPC as the representatives of the appellant or its counsel could not appear before the trial court on 22.10.2007 due to misunderstanding of the date that was taken to be 31.10.2007. It is further argued that the entire effort of the appellant to bring the proceedings to its logical end would be rendered futile in case the suit is not disposed of on its merits after setting aside the orders impugned.

I have heard counsel for the appellant, perused the records particularly the orders impugned.

On a pointed query raised by the Court, if the appellant adduced any evidence subsequent to remittance of the case to the trial court by the court in appeal after setting aside the judgment and decree dated 6.6.2006 by giving it one opportunity to produce evidence, counsel has fairly informed the Court that no evidence was adduced despite the case being adjourned thrice for the said purpose. A bare reading of the facts on record would make it apparent that initially the suit was instituted in the year 1996 and came to be dismissed by the trial court after 10 years vide judgment and decree dated 6.6.2006 as the appellant failed to adduce any evidence by taking recourse to the provisions of Order 17 rule 3 CPC after the judgment and decree passed by the trial court was set aside in the appeal by granting one opportunity to the appellant to examine its witnesses, the appellant failed to avail of the concession granted by the court. In view of callous and indifferent attitude of the appellant towards the court

proceedings reflected from the facts elicited in the impugned order, I do not find any reason to interfere in the orders passed by the courts below even after taking into consideration the fact that the court is required to put best endeavour to decide the disputed claims on the basis of merits. The present appellant is guilty of abuse and misuse of process of law and wasting of precious time of the Court at different levels.

For the foregoing reasons, finding no merit, the appeal is dismissed in limine.

(Rekha Mittal)
Judge

7.4.2016
PARAMJIT