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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 314/2016

ASHWANI KUMAR SHARMA

..... Appellant

Through: Mr.Avadh Kaushik and Mr.Pankaj
Kumar, Advocates.

versus

KHEM SINGH RANA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

10.01.2017

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RSA No.314/2016

1. Though, as per the office report, notices sent to the respondent through ordinary process as well as through speed post have been duly served, none has appeared on behalf of the respondent despite the matter being passed over.
2. The instant Regular Second Appeal has been preferred by the appellant/plaintiff impugning the judgment dated 26.07.2016 passed by the First Appellate Court in RCA No.63/2014
3. Heard learned counsel for the appellant.
4. In brief, the case of the appellant/plaintiff is that on 15.04.2011 he filed Civil Suit No.158/2011 against the respondent/defendant seeking the relief of possession, recovery of damages and permanent injunction. Vide order dated 30.10.2012 the civil suit was partly decreed by the learned Trial

Court under Order XII Rule 6 CPC and possession of the suit property i.e. Flat No.18, New Vidhyachal Co-operative Housing Society, Plot No.41, Sector-13, Rohini, Delhi has been taken over by the appellant/plaintiff on 22.12.2012.

5. Thereafter the appellant/plaintiff led evidence in respect of his claim for recovery of damages. Since the respondent/defendant failed to appear before the learned Trial on three dates of hearing, the defendant's evidence was closed on 28.09.2013. The civil suit in respect of the prayer of the appellant/plaintiff for recovery of damages was decreed by the learned Trial Court vide judgment and decree dated 30.10.2013.

6. Feeling aggrieved by the judgment and decree dated 30.10.2013, the respondent/defendant preferred RCA No.63/2014. Vide order dated 26.07.2016 the First Appellate Court allowed the appeal to the extent that the case was remanded to learned Trial Court with the directions to give at least two opportunities to the defendant to cross examine the plaintiff and also to give two opportunities to the defendant to lead his evidence. The First Appellate Court also directed that after cross examination of PW-1 and leading DE, the learned Trial Court shall hear learned counsel for the parties and pass the judgment.

7. Against the order dated 26.07.2016 passed by the First Appellate Court, this Regular Second Appeal has been preferred by the appellant/plaintiff.

8. During the course of hearing today learned counsel for the appellant/plaintiff has submitted that since the respondent has preferred not to appear even today despite service and matter being passed over, he restricts his prayer to the extent that the appeal may be disposed of by

issuing directions to the learned Trial Court to conclude trial and dispose of Civil Suit No.158/11 in a time bound manner, preferably within four months. Learned counsel for the appellant/plaintiff further submits that matter is now listed before the learned Trial Court on 08.02.2017 and on that date, the appellant/plaintiff will appear in person for his cross examination, which if not concluded on the same day may continue on the next working day. After cross examination of the appellant/plaintiff, two short adjournments may be granted by the learned Trial Court to the respondent/defendant to lead his evidence and thereafter case may be disposed of expeditiously.

9. In view of the above submissions made by learned counsel for the appellant, this Regular Second Appeal is disposed of with directions to the appellant/plaintiff to appear before the learned Trial Court on 08.02.2017 for his cross examination.

10. Noticing the conduct of the respondent/defendant before the learned Trial Court as well as before this Court that he chose not to appear before this Court despite service, it is directed that on his failure to cross examine the appellant/plaintiff on 08.02.2017, the opportunity to cross examine the appellant/plaintiff shall be deemed to have been availed by the respondent/defendant and no further opportunity shall be granted by the learned Trial Court for the said purpose. Thereafter the learned Trial Court shall give two opportunities to the respondent/defendant to lead defence evidence, which shall be within a period of two months from 08.02.2017. The learned Trial Court is directed to conclude the trial and pronounce the judgment within six months to be reckoned from 08.02.2017 when the matter is stated to be listed before the learned Trial Court.

11. With above directions, the Regular Second Appeal is disposed of.
12. No costs.
13. As prayed, copy of the order be given dasti to learned counsel for the appellant.
14. A copy of this order be also sent to learned Trial Court through concerned District Judge for compliance.

CM No.38946/2016 (Stay)

Dismissed as infructuous.

PRATIBHA RANI, J.

JANUARY 10, 2017

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