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

+ **RFA(COMM) 122/2023 & C.M.Nos.31418-31421/2023**

DHIRAJ SAHNI

..... APPELLANT

Through: None

versus

RISHI ANAND

..... RESPONDENT

Through: None

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Date of Decision: 11th July, 2023

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T

MANMOHAN, J: (ORAL)

1. Even at the pass over stage, none is present for the appellant. On the last date of hearing, the matter had been adjourned at the request of the learned counsel for the appellant. The appellant has not argued this appeal till date. Consequently, this Court has no other option, but to proceed ahead with the matter.

2. It is pertinent to mention that present appeal has been filed challenging the judgment and decree dated 22nd December, 2022 passed by the learned District Judge (Commercial), North District, Delhi in CS (OS) (COMM.) 464/2021. Appellant also seeks a direction to the learned District Court to hear the matter afresh on merit after rejection of respondent-plaintiff's application filed under Order XIII-A of the Code of Civil Procedure, 1908 ('CPC').

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3. The appellant-defendant has averred in the present appeal that the impugned judgment is erroneous as the appellant-defendant had raised multiple triable issues in the written statement like payments due, if any, to the respondent-plaintiff were subject to the goods being sold as the goods were of old stock and/or material worth Rs.1,40,505/- had been returned to the respondent-plaintiff being defective.

4. A perusal of the paper book reveals that by way of the impugned order, the application filed by the respondent-plaintiff under Order XIII-A of CPC was allowed on the ground that the written statement filed by the appellant-defendant had been taken off the record on account of failure to pay cost imposed by the Court and the appellant-defendant had failed to file an affidavit of admission/denial of respondent-plaintiff's document. Further, the appellant-defendant's counsel had not appeared on the date the application under Order XIII-A of CPC was listed for arguments. Consequently, this Court is of the view that neither the written statement nor any defence of the appellant-defendant was brought to the notice of the trial Court.

5. Accordingly, the test stipulated under Order XIII-A of CPC namely that the appellant-defendant had no real prospect to successfully defend his case was satisfied. Keeping in view the aforesaid, the present appeal along with pending applications is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

JULY 11, 2023/KA

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