

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

RSA No.1548 of 2009 (O&M)

Date of Decision: 30.5.2009

Teja Singh

.. Appellant

VS.

Bimla Devi

.. Respondent.

CORAM: HON'BLE MR. JUSTICE ARVIND KUMAR,

**Present:- Mr. H.S. Dhandi, Advocate
for the appellant.**

ARVIND KUMAR, J.

The appellant was sued by the respondent Bimla Devi in a suit for possession by way of specific performance of agreement to sell dated 13.5.1999.

After contest, the suit was decreed and the appellant was directed to perform specific performance of the agreement.

Aggrieved with the same, the appellant preferred an appeal before the first appellate Court below, but vide judgment and decree dated 10.12.2008 the same was also dismissed. It emerges out from the perusal of the paper book as also the zimni orders placed on record that the case was adjourned on several dates and on 5.12.2008, there was no representation for and on behalf of the appellant, irrespective of that the appellate Court below heard the arguments of counsel for the respondent and adjourned the case for 10.12.2008 for pronouncing the order and the verdict was made on that date and the appeal was dismissed, meaning thereby the appeal of the appellant was dismissed without hearing his counsel. On account of non-appearance of counsel or the appellant, the first appellate Court below ought not to have decided the matter on merits and could have resorted to dismiss the appeal for want of prosecution. In this context, reliance can be placed on the dicta of Hon'ble Apex Court in the case of **Secretary, Department of**

Horticulture, Chandigarh & Anr. Vs. Raghu Raj 2008(13) SCC 395. But since the appellate Court below has not adopted the due course, the impugned judgment and decree passed by it is liable to be set aside

In the light of above discussion, the judgment and decree passed by the learned first appellate Court below is set aside. However, the matter is remanded to the first appellate Court below to decide the matter afresh after hearing both the parties, on merits, without being influenced by any observations made here-in-above.

The parties through their counsel are directed to appear before the first appellate Court on 24.7.2009. Court fee be refunded to the appellant as per rules.

Keeping in view the circumstances mentioned above, this appeal is being disposed of without issuing any notice to the opposite party. If respondent is summoned to contest this litigation, she will have to incur huge expenses to defend this case. However, liberty is granted to the respondent that if she feel dissatisfied with this order, she may move an application to recall the same.

(ARVIND KUMAR)
JUDGE

May 30,2009
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