

IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR No.3731 of 2014 (O&M)
Decided on:-February 12, 2015.

Balbir Singh

.....Petitioner.

Versus

Balwinder Singh and others

.....Respondents.

CORAM: HON'BLE MR. JUSTICE DR. BHARAT BHUSHAN PARSOON.

Argued by:- Mr. Hamid Hussan, Advocate for the petitioner.

Dr. Bharat Bhushan Parsoon, J. (Oral)

This civil revision petition invoking supervisory powers of this Court under Article 227 of the Constitution of India, has been preferred by plaintiff Balbir Singh, petitioner herein, challenging order dated 11.01.2013 (Annexure P-1) whereby the lower court on non-deposit of costs had dismissed the suit under Section 35-B of the Civil Procedure Code (for short, the CPC) as also order dated 18.04.2014 of Additional District Judge, Panchkula (Annexure P-2) whereby appeal against order of the lower court was also dismissed.

2. It is claimed that costs of Rs.500/- was imposed on 11.01.2013 because of non-filing of copies of plaint and summon forms for service of defendants No.6 and 7, and counsel for the plaintiff was asked to deposit the same by 12.30 p.m. on the same day which the counsel for the plaintiff could not deposit due to absence of contact with the plaintiff. It is further

urged that when the plaintiff, petitioner herein, had not even known the order of deposit of costs of Rs.500/-, he could have made compliance of the same on 11.01.2013 itself by 12.30 pm as was ordered by the lower Court. It is urged that the impugned order has been made in haste.

3. Appeal against this order of 11.01.2013 was also dismissed on 18.04.2014 by the first Appellate Court. Order of the lower court under Section 35B of the CPC for non-payment of costs results in finally deciding the suit and would not be termed as interim revisable order. It is appealable. Appeal was preferred which was also dismissed on 18.04.2014 by the first Appellate Court. Since appeal is a right created by the statute under Section 104(1)(ff) CPC and no Regular Second Appeal is provided against such order of first Appellate Court, only revision would be maintainable.

4. It is claimed by the petitioner-revisionist that the lower court was in a tearing hurry and the appellate Court has not considered the material aspects before dismissing the appeal. It is claimed that the plaintiff could not have been contacted by his lawyer to deposit the costs on the same day and that too by 12.30 pm. It is urged that dismissal of the suit vide impugned order of the trial court and affirmation thereof by the first Appellate Court allegedly has caused great prejudice to the plaintiff in adjudication of his substantive rights in the suit.

5. Hearing has been provided.

6. No notice is being issued to the defendants to obviate delay as also keeping in view the fact that no prejudice is going to be caused to the defendant by nature of the order which is going to be passed by this Court.

7. Learned counsel for the petitioner submits that against an order of dismissal of the suit on account of non-payment of costs under Section 35-B CPC, appeal lies as the dismissal of the suit under Section 35B is a “decree” as defined in the Code of Civil Procedure. In support of this

submission, he has drawn the attention of this Court to **Jagar Singh and others versus Baldev Kaur (2000)126 PLR 831 (P&H)**

8. Impugned order of the lower Court clearly reveals that the Court was in a tearing hurry and had called upon the plaintiff to deposit the costs imposed the same day on 10.01.2013 itself by 12.30 p.m. The plaintiff-petitioner is a resident of village Barwala, whereas the courts are located at Panchkula. The counsel could not contact the plaintiff and thus could not deposit the costs on the same day. It is alleged that when appeal was preferred, the costs had already been deposited.

9. The appeal was preferred with expeditious dispatch on coming to know of the impugned order passed by the trial Court on 11.01.2013. The first Appellate Court has neither given definite finding regarding maintainability of the appeal nor with regard to condonation of delay. It has been urged that the appeal was preferred quickly after coming to know of dismissal of the suit.

10. A party should not suffer because of fault of his counsel. If counsel for the plaintiff did not inform the plaintiff about dismissal of the suit, such communication gap between his counsel and the plaintiff should not be taken to his prejudice. When costs of Rs.500/- had already been deposited before filing of the first appeal on receipt of knowledge by the plaintiff and there is absolutely no explanation emerging from the impugned order as to what was the tearing hurry for deposit of costs on the day of imposition i.e. on 11.01.2013 itself. Not only this, the plaintiff was called upon to deposit the costs by 12.30 p.m. Though it is not clear as to at what time the order was passed, the plaintiff being a resident of a place situated far away from the courts at Panchkula, even after intimation, could not have possibly come present. By all means, order dated 11.01.2013 in dismissing the suit is an order made in tearing hurry without explaining any reasons for the same and is a very harsh order prejudicing the rights of the plaintiff.

Moreover the circumstances in this case were beyond the control of the plaintiff. Similarly, impugned order of 18.04.2014 passed by the first Appellate Court also suffers from the same infirmity and illegality.

11. Keeping in view the facts and circumstances as discussed above, accepting the revision petition and setting aside the impugned orders, the suit is restored to its original number. The parties would appear before the court below on 16.03.2015.

12. As has already been mentioned above, costs have already been deposited by the petitioner-plaintiff, the suit would proceed further.

February 12, 2015
pooja saini

(Dr. Bharat Bhushan Parsoon)
Judge

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