

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Writ Petition No. 8204 of 2015 (O&M)

Date of decision : 07.05.2015

Satpal and others

.....Petitioners

Versus

The Authorised Officer, PNB and others

....Respondents

**CORAM:- HON'BLE MR. JUSTICE HEMANT GUPTA
HON'BLE MRS. JUSTICE LISA GILL**

Present: Mr. Raj Kumar, Advocate
for the petitioners.

Mr. R.S. Bhatia, Advocate
for respondent No. 1/Bank.

Hemant Gupta, J.

Challenge in the present writ petition is to an order dated 17.11.2014 (Annexure P-18) whereby an appeal filed by the writ petitioners was dismissed by the Debt Recovery Appellate Tribunal for the reason that the petitioners have not deposited cost imposed on 21.03.2014 and that earlier request of waiving of cost was rejected on 25.09.2014 but still the cost was not paid. Another request was made for review of order, which was not entertained and consequently, the learned Debts Recovery Appellate Tribunal found that intention of the present petitioners is clear and it is not to pay the cost. In terms of Section 35-B of Code of Civil Procedure, the payment of cost is condition precedent for further prosecution of the appeal.

It was found that the petitioners cannot be permitted to prosecute this appeal as they have not complied with the condition precedent to further prosecute

the appeal.

Learned counsel for petitioners relies upon judgment of Hon'ble Supreme Court reported as **Manohar Singh Versus D.S. Sharma and others AIR 2010 Supreme Court 508** to contend that non-payment of cost disentitles the plaintiff to lead evidence and to argue the matter but it does not absolve the Court from deciding the *lis* on merits.

Mr. Bhatia, learned counsel for the Bank pointed out that Manohar Singh's case (supra) was a case of suit wherein the plaintiff has led some evidence but later on cost imposed was not paid. In this situation, the Court has said that non-payment of cost leads to cessation of any further right to participate in the suit and the party would not led any evidence and further arguments. But in appeal, the situation is different. The appellant cannot address arguments for non-payment of cost. Therefore, the only option with the appellate Court is to dismiss the appeal for non prosecution. It is the said order which has been passed by the Tribunal, which is in terms of the aforesaid judgment itself. The relevant extract of the judgment reads as under:-

“This would mean that if the costs levied were not paid by the party on whom it is levied, such defaulting party is prohibited from any further participation in the suit. In order words, he ceases to have any further right to participate in the suit and he will not be permitted to let in any further evidence or address arguments. The other party will of course be permitted to place his evidence and address arguments, and the court will then decide the matter in accordance with law. We therefore reject the contention of the respondents that Section 35B contemplates or requires dismissal of the suit as an

automatic consequence of non-payment of costs by plaintiff.”

We have heard learned counsel for the parties and find no merit in the present writ petition. The contumacious conduct of the petitioners has been noticed by the learned Debts Recovery Appellate Tribunal inasmuch as the cost imposed on 21.03.2014 was not deposited. The request of waiver of the cost was rejected on 25.09.2014 but still the cost was not paid. Even the counsel was not coming present to argue the matter. Therefore, inference is drawn by the Tribunal that the petitioners are interested in delaying the matter and not to argue the matter. Therefore, the impugned order cannot be said to be unjustified. In terms of Manohar Singh's case (supra), the petitioners have lost their right to argue the matter for non-payment of cost in terms of Section 35-B of Code of Civil Procedure. In the absence of right to argue, the Tribunal is not expected to go through the grounds of appeal and to pass the order, even in the absence of counsel for the appellant before it. The Tribunal is not bound to decide the appeal on merits in the absence of the counsel for the appellant. We do not find any error in the order of appellate Tribunal in the light of Manohar Singh's case (supra) as well.

Consequently, we find no merit in the writ petition. The same is, accordingly, dismissed.

(Hemant Gupta)
Judge

(Lisa Gill)
Judge

May 07, 2015
rts