

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.4422 of 2016

Date of Decision: 12.08.2016

Teja Singh

.....Petitioner

Vs

Dhiyan Singh through his LRs

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gurvinder Singh, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed orders dated 26.09.2014 and 14.08.2015 vide which defendant was proceeded against *ex parte* under Section 35-B CPC for non-payment of cost and application on behalf of the defendant for setting aside the *ex parte* order dated 26.09.2014 and for permission to join the proceedings was dismissed.

[2]. On 30.05.2014, one plaintiff witness was present, but the same was not examined as the learned proxy counsel for the defendant sought time on the ground that original counsel was not available. The case was adjourned on the request of the defendant, subject to payment of cost of Rs.500/-. The cost

was ordered to be paid to the plaintiff. The case was adjourned for 11.07.2014. Ultimately the case was fixed for 26.09.2014 for the evidence of the plaintiff as well as for making the payment of cost by the defendant. The cost was not paid by the defendant. The case was called several times since morning, but none appeared on behalf of the defendant, even in afternoon session. The trial Court thought it appropriate to proceed against defendant and resultantly defendant was proceeded against *ex parte* under Section 35-B CPC for non-payment of cost.

[3]. Section 35-B CPC is in the context that, if on the date fixed, the party fails to come present and seeks time, then the Court for reasons to be recorded, shall make an order requiring such party to pay to the other party such costs as would be deemed necessary and reasonable by the Court. The payment of such costs on the next date shall be a condition precedent for further prosecution of the case. In any case, the costs ordered to be paid under Section 35-B (1) CPC shall not be included in the cost awarded in the decree passed in the suit. This cost is meant towards reimbursement of the other party in respect of expenses incurred by the party in attending the court on the last date when the opposite party sought time. Since the cost was not paid, therefore, the same was a condition precedent for further prosecution of the case. On 26.09.2014, cost imposed

under Section 35-B CPC on previous date was not paid by the defendant and, therefore, there was no occasion for the defendant to ask for setting aside of such order at a subsequent stage and to move for joining the proceedings.

[4]. On 26.09.2014, neither the defendant came present in the court, nor payment of the cost was made good and, therefore, defendant was proceeded against *ex parte* under Section 35-B CPC for non-payment of cost. Even after availing two effective opportunities after the order dated 30.05.2014, the defendant remained idle to perform his part of obligation. He did not appear in the Court and did not adhere to the provisions in terms of Section 35-B CPC.

[5]. Since the payment of cost was a condition precedent for further prosecution of the case, therefore, non-payment of the cost would make the present revision not maintainable. Even there is no good reason to set aside the order dated 26.09.2015.

[6]. In view of aforesaid, this Court does not find any sufficient cause for interference in this revision petition, which is apparently not maintainable, when the cost was not paid in terms of Section 35-B CPC.

[7]. For the reasons mentioned above, this revision petition

is found to be totally devoid of merits and the same is accordingly dismissed.

August 12, 2016
Atik

(RAJ MOHAN SINGH)
JUDGE

Whether speaking/reasoned Yes / No

Whether reportable Yes / No