

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

**CR No.6797 of 2013
Decided on: 10.08.2016**

Gargi Sharma and others

....Petitioners

Versus

Gurcharan Kaur and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Parveen Chander Goyal, Advocate
for the petitioners.

Mr. Salil Sagar, Sr. Advocate
with Mr. Sankalp Sagar, Advocate
for the respondents.

REKHA MITTAL, J.

The present petition has been directed against order dated 14.10.2013 (Annexure P-3) passed by the Additional Civil Judge (Sr. Division) Jalandhar whereby application of the petitioners/defendants under Section 35-B of the Code of Civil Procedure (in short 'CPC') for stopping further prosecution of suit by the plaintiffs/respondents has been dismissed.

Counsel for the petitioners has submitted that the application for additional evidence filed by the respondents/plaintiffs was allowed by the trial Court subject to payment of costs of Rs.2,000/- vide order dated 26.07.2013. Subsequent thereto, the respondents neither made any effort to examine any witness nor summoned any witness through process of the Court nor paid costs of Rs.2,000/-, therefore, right of the respondents/plaintiffs to further prosecute the suit was liable to be closed. In addition, it is submitted that despite expiry of

a period of three years since 26.07.2013, the respondents/plaintiffs have not closed their additional evidence, sufficient to show that the respondents filed the application for additional evidence with an intent to delay decision of the suit on a false pretext, that was instituted in the year 2007.

Counsel for the respondents/plaintiffs has submitted that as the petitioners refused to accept the costs tendered on 23.08.2013, the date fixed by the trial Court for evidence as well as payment of costs, no error much less infirmity can be found in the order impugned.

I have heard counsel for the parties, perused the paperbook particularly the order impugned and the certified copies of the *zimini* orders recorded by the trial Court dated 13.08.2013 and 23.08.2013.

It is an undisputed position of the case that application of the respondents/plaintiffs for additional evidence was allowed by the trial Court on 26.07.2013 subject to payment of costs of Rs.2,000/- and the case was adjourned to 13.08.2013. On the adjourned date, no evidence of the respondents was present and the case was adjourned to 23.08.2013 with a specific mention that earlier costs were not paid. It appears that on 13.08.2013, counsel for the petitioners did not press before the trial Court that failure of the respondents/plaintiffs to tender costs should entail adverse consequence of dismissal of the application for additional evidence. On the next date i.e. 23.08.2013, application under Section 35-B CPC was filed and the case was adjourned to 27.08.2013 for filing of its reply. On that date itself, costs were offered but not accepted by the other side. As soon as the trial Court adjourned

the case on 13.08.2013 even after noticing that the respondents/plaintiffs have not paid the costs subject to which application for additional evidence was allowed and on the adjourned date, costs were offered to be paid but not accepted, I find it difficult to accept contentions of the petitioners/defendants. This apart, Section 35-B (2) CPC provides that if costs ordered to be paid under sub-section (1) are not paid, a separate order shall be drawn up indicating the amount of such costs and the names and addresses of the persons by whom such costs are payable and the orders so drawn shall be executable against such persons. In the given facts and circumstances, at best, the petitioners can press into service the provisions of sub-section (2) praying for drawing up a separate order in regard to the costs which were held to be payable by the respondents/plaintiffs. In view of the above, the petition sans merit and disposed of accordingly.

Before parting with this order, it is pertinent to note that as per submissions made by counsel for the petitioners/defendants, the case is still pending for evidence of the respondents/plaintiffs despite a period of three years has intervened since the application for additional evidence was allowed. The trial Court is directed to look into this aspect as to why the case is being adjourned for the past three years and that too for additional evidence. The trial Court shall put its best endeavor to dispose of the suit expeditiously under intimation to this Court.

10.08.2016*yakub***(REKHA MITTAL)
JUDGE**

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No