

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

**CR No.7247 of 2016
Date of Decision-26.10.2016**

Joginder Singh ... Petitioner

Versus

Gurpreet Singh ... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged order dated 21.07.2016 passed by Civil Judge (Junior Division), Jagraon whereby evidence of the petitioner-defendant was closed by order of the Court and also an order dated 06.09.2016 passed by the trial Court whereby application for leading further evidence by the defendant was dismissed.

[2]. Plaintiff-respondent filed a suit for recovery of Rs.16,74,375/- along with *pendente lite* and future interest.

[3]. Suit was contested by the defendant-petitioner. Affidavit of defendant-petitioner was tendered under Order 18 Rule 4 CPC on 04.01.2016. The evidence of the plaintiff was closed on 21.01.2015 and thereafter, the case was posted for evidence of the defendant for 10.02.2015. Defendant took 18 effective opportunities to conclude his evidence, but the defendant failed to conclude his evidence despite several opportunities including last opportunities as well as opportunity

granted by the Court subject to payment of costs. Defendant did not pay even the costs. Finding no alternative, the trial Court closed the evidence of the defendant and fixed the case for rebuttal and arguments vide order dated 21.07.2016.

[4]. An application was filed by defendant for re-opening the case for further evidence of the defendant on the premise that defendant was an agriculturist and in connection with his agricultural work he had gone to Madhya Pradesh for reaping wheat crop husk with his reaper where he was stranded in floods and could not return in time. The non-appearance of the defendant in the Court was claimed to be on account of his being stuck up in Madhya Pradesh due to flood situation. The non-appearance of the defendant was claimed to be on account of unavoidable circumstances beyond the control of the defendant.

[5]. The claim of the defendant was contested by the plaintiff.

[6]. Trial Court found that the defendant had already availed 18 effective opportunities including last opportunities as well as opportunity granted by the Court subject to payment of costs. Even the amount of cost was not paid. In terms of Section 35-B CPC the Court may for reasons to be recorded can impose costs on the defaulting party. Such cost is always a condition precedent for further prosecution of the case. The cost ordered by the Court has to be paid before further proceedings are

undertaken by the Court. The language used in Section 35-B CPC is mandatory in nature. The non-payment of cost would render the defaulting party remediless as the cost was a condition precedent for further prosecution of the defence by the defendant where defendant was ordered to pay such cost.

[7]. Firstly the cost was not paid even after filing the application for re-opening of the case. Defendant consumed 18 effective opportunities including last opportunities and opportunity with costs. The reason for non-appearance and not leading the evidence in considered opinion of this Court was not justified as the defendant was not supposed to remain away for a period from 04.01.2016 to 21.07.2016. No particulars of area were mentioned where the floods had taken place in the State of Madhya Pradesh. The purpose of visit of the petitioner was claimed to be only to reap wheat crop husk which cannot be equated with harvesting of crop by combine. Reaping of wheat crop husk is a very small mechanism.

[8]. Without commenting anything on the veracity of claim made by the defendant-petitioner any more, this Court is constrained to dismiss this revision petition. Defendant had already availed 18 effective opportunities and even the cost imposed by the trial Court was not paid. Payment of cost was a condition precedent for further prosecution before the trial Court. Therefore keeping in view the conduct of persisting default of the

defendant in leading evidence, I find no justification in interfering with the order passed by the trial Court. This revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

26.10.2016
Prince

Whether reasoned/speaking	Yes/No
Whether reportable	Yes/No