

124. Review Application No.35-CII of 2016 in
Civil Revision No.8805 of 2015

Darshan Singh and others
Versus
Narinder Pal Singh and others

Present: Dr. Surinder Singh Joshi, Advocate,
for the applicants/petitioners.

The review application is filed by the plaintiff to point out to an error contained in the order that records a finding that the written statement has been already on record. The order was passed in the absence of the plaintiff and the revision was disposed of by dispensing with such notice. It was a situation where the defendant had been set ex parte and an application had been filed to set aside the order under Order 9 Rule 7 CPC. The court had allowed the ex parte order to be set aside on payment of costs of ₹2,500/- before 22.12.2014. On 22.12.2014, the defendant had filed the written statement but had not paid the costs. The court had, therefore, adjourned the case to 24.03.2015 for consideration of whether the statement could be received. The counsel for the plaintiff therefore points out that the assumption of this court that the written statement was already on record was erroneous and that it was merely for consideration of whether the statement could be received or not. The counsel would refer me to a Full Bench ruling of this Court in **Shri Anand Parkash Versus Shri Bharat Bhushan Rai and another- 1981 PLR 555** that held that a court giving adjournment and imposing cost would decline the prosecution or defence, as the case

may be, if the cost was not paid. I would take this judgment as not strictly relevant for us, for, if there was a direction for imposition of cost, there could be no doubt that if it was not complied with, the benefit of the order setting aside the ex parte order would not obtain to the defendant. In this case what all is required to be done is that the court will take on record the statement already filed on 22.12.2014 after ensuring that the cost is paid. I direct the payment of cost to be made before a date which the court may fix and this is done in exercise of discretion under Section 148 of the Civil Procedure Code and if the cost is paid, the statement filed on 22.12.2014 will be taken as regularized and filed within time. The order passed already would require, if at all, to be modified only to this extent and since I have granted the benefit of the statement to be taken on record after the fulfillment of the direction already given on a date to be fixed by the court, I dispense with notice to the respondents and dispose of the review application as above.

(K.KANNAN)
JUDGE

29.02.2016
sanjeev