

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No. 1207 of 2017 (O&M)

Date of decision: 02.03.2017

Cantonment Board, Ferozepur Cantt

... Petitioner

versus

Ravi Kumar Soi and others

.... Respondents

**CORAM: HON'BLE MR. JUSTICE G.S. SANDHAWALIA**

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Present: Mr. Kamal Narula, Advocate for the petitioner.

**G.S. SANDHAWALIA, J. (ORAL)**

The present revision petition filed by the petitioner-tenant is directed against the order dated 18.01.2017 passed by the Rent Controller, Ferozepur whereby the application for recalling of order dated 17.11.2016 has been declined. The reasoning given by the Rent Controller was that on the said date one witness namely Raj Kumar AW-3 was present in the Court for cross-examination but the counsel had failed to cross-examine him and cross-examined the other witness namely, Vinod Kumar AW-2. The case has been called in the two sessions, i.e. Morning session and afternoon session. It was also noticed that costs were imposed upon the respondents which had not been paid till that date. Resultantly, the cross-examination of the Raj Kumar was treated as NIL. It is further noticed that another witness namely Veerpal Soi AW-4 had come and has been examined-in-chief in the affirmative by tendering evidence and opportunity was given for cross-examining

him on the next date, i.e. 14.12.2016. It is also to be noticed that no request was made before the Court and counsel chose not to appear to cross-examine the witness Raj Kumar who had been examined-in-chief on 18.05.2015. Resultantly, the application was dismissed.

Counsel for the petitioner has vehemently submitted that the party cannot be put to fault as such on account of the lapse of the counsel who was not present and that the petitioner is ready to pay the cost. The said argument cannot be accepted keeping in view the judgment of the Full Bench in Anand Parkash Vs. Bharat Bhushan Rai and another, AIR 1981 P&H 269. It has been held that once costs are imposed, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be.

*It was contended by Mr. Goel, learned counsel for the respondent, that though word 'shall' has been used in the Section but by user of that word the power of the Court for granting more time for paying the costs is not taken away. I am afraid, I am, unable to agree with the contention of the learned counsel for the contention of the learned counsel for the respondent. There might have been some merit in the contention of Mr. Goel if the word 'shall' had been used alone as in that event the judgment cited for the proposition that mere use of word 'shall' may not make a statute mandatory, would have been of some relevance. But in the instant case, a bare scrutiny of the provisions of [Section 35B](#) would show that the Legislature had made its intention absolutely clear and beyond the pale of any doubt that the provision are mandatory in nature and any non-compliance*

*with the same would result in penal consequences as envisaged therein. When the provision of [Section 35B](#) are analysed we find that the Legislature was not satisfied by using the word 'shall' only and this word shall' in the Section is qualified by the words 'condition precedent'. Where a statute declares that doing of a particular thing shall be a condition precedent, then obviously the intention is to make it a peremptory mandate. A condition precedent is a condition which must be performed, if the Legislature had not intended to make the provisions of the Section mandatory, then it was not at all necessary for the Legislature to have qualified the word 'shall' by using words 'condition precedent'. The Legislature has made its intention absolutely clear by using the words 'shall be a condition precedent' that the provision of this section are mandatory in nature and that any non-compliance of these provision would be fatal. To me the words 'condition precedent' qualifying the word ' shall' appear to be the clincher for interpreting the provisions of [Section 35B](#) are mandatory. As has been observed earlier the costs are ordered to be paid to compensate the other party who for no fault of his has to undergo inconvenience and incur expenses. If an adjournment is sought and the same is granted on payment of costs, then on the next date of hearing the party who sought adjournment, is bound to pay the costs. In my view, on the plain language of the section the Court is only required to see whether the costs have been paid or not and if a party does not pay the costs. Then the only course open to the Court is to disallow the prosecution of the suit or the defence any further. The Court would not go into the question whether the party who*

*sought adjournment has or has not been guilty of delaying the suit or that it was not useful for the party to lead evidence or that the adjournment sought was unnecessary. When a party seeks adjournment, he pays the costs for his own folly or mistake which results into inconvenience and unnecessary harassment of the other side. He does not do so as an act of benevolence. Moreover, a litigant is expected to show full respect to the words of the Court, he cannot be permitted to ignore them or flout them with impunity. In case he opts to disregard the orders of the court and fails to pay the costs, then he must suffer penal consequences. The duty of paying costs is on the party who has been ordered to pay the costs. The Court or the party who has to receive costs, is not obliged to remind this delinquent party to perform its duty. The whole purpose of enacting this provision would be frustrated if the same is held to be directory. It may again be emphasised that the Courts are not required to find out as to what was the intention of the party in obtaining adjournment at the moment as adjournment is obtained on the date on which a suit is fixed for hearing or for taking any step therein, then the same results in the delay of the decision of the suit. One of the essential requirements for attracting the applicability of this provision is that the date has to be when a suit is fixed for hearing or for taking any step therein. If the date is only for depositing of process fee or for doing some such act; then it cannot be said that the suit was fixed for hearing or for taking any step therein. When once the ingredients of the Section are proved, then no other extraneous consideration would be taken into account by the Courts.*

*“14. Cases are not wanting in which the Courts have*

*moulded their practice to meet a situation over which a party has had no control and for that purpose the Court has ample power under S. 148 of the Code which reads as under:--*

*"Where any period is fixed or granted by the Court for doing of any act prescribed or allowed by this code, the Court may in its discretion from time to time, enlarge such period, even though the period originally fixed or granted may have expired."*

*As a result of the aforesaid discussion, I hold that in the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence as the case may be, and that no other extraneous consideration would weigh with the court in exercising its jurisdiction against the delinquent party. However, in cases, where costs are not paid as a result of the circumstances beyond the control of the defaulting party, then the Court will be well within its jurisdiction to exercise its power under Section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction."*

In cases where the costs are not paid as a result of the circumstances beyond the control of the defaulting party, then the Court will be within its jurisdiction to exercise the power, after a strong case is made out for exercise of such jurisdiction. The perusal of the order dated 17.11.2016 would too show that Vinod Kumar and Raj Kumar were present but counsel for the petitioner had not come inspite of the case being called at repeated intervals. The file was kept for post lunch

session. The counsel, thereafter appeared and filed his power of attorney and cross-examined one of the witnesses but failed to examine Raj Kumar. Resultantly, his evidence was treated as NIL.

It is to be noted that on an earlier occasion cost of ₹ 500/- was imposed which was also not paid on the said date. In these circumstances, the Court was compelled to take a drastic step. The affidavit of another witness of the landlord was taken on record and the cross-examination was deferred on account of that Court time was over with the condition that it was only for AW4. The said order became final and was never challenged before this Court. Thereafter, the application filed for recalling which has now been dismissed for the reasons which have already been noticed above. Resultantly, keeping in view the above facts this Court is of the opinion that the Rent Controller has not acted with illegality and irregularity while dismissing the application for recalling of the earlier order and in such circumstances, indulgence under Article 227 is not permitted.

The present civil revision petition is dismissed.

**(G.S. SANDHAWALIA)**  
**JUDGE**

02.03.2017

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Whether speaking/non-speaking: Yes/No  
Whether reportable : Yes/No