

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

**Civil Revision No.755 of 2017
Decided on : 03.02.2017**

Ashok Kumar and another

... Petitioners

Versus

Lakhwinder Singh

... Respondent

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

Present : Mr. M.L. Ahuja, Advocate for the petitioners.

G.S. Sandhawalia, J. (Oral)

The present revision petition is directed against the order dated 28.03.2016 (Annexure P-1), whereby on account of non-payment of ₹200/- as costs and in view of the fact that the petitioners who were the tenants had put in appearance on 30.09.2014 and had not filed the reply, the drastic step of striking the defence off was taken.

Challenge has also been raised to the order dated 06.10.2016 (Annexure P-3), whereby the review application subsequently filed on 01.07.2016 was dismissed on the ground that the review was not maintainable and the remedy would have been to file the revision against the order.

Counsel for the petitioner has vehemently pointed out that on account of the proceedings *inter se* an application having been filed under Order 1 Rule 10 CPC and in view of the fact that the matter was kept pending, since the Presiding Officer was on leave, the reply was not filed inadvertently by the counsel.

The said argument deserves to be rejected, in view of the judgment of the Full Bench of this Court in '**Anand Parkash Vs. Bharat**

***Bhushan Rai and another'* AIR 1981 P&H 269.** In the said judgment it was held that once the costs have been imposed and are not paid, the Court is under a compulsion to strike off the defence. The same reads as under:-

“16. 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 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.”

The proposition as such which has been propounded by the counsel for the petitioner that in the interest of justice the petitioner be protected, cannot be acceded to in view of the peculiar facts and circumstances of the case.

Counsel for the tenant had put in appearance on 30.09.2014 before the Rent Controller and thereafter on the next date of hearing i.e. 29.10.2014 he had filed his power of attorney. Last opportunity was

granted on 24.12.2014 by the Rent Controller. Reply was not filed, thereafter, and various proceedings took place regarding the application under Order 1 Rule 10 CPC. Nevertheless on transfer on 21.10.2015 to a different Court one more opportunity was granted to the petitioner to file reply till 13.11.2015, subject to the costs of ₹200/- to be deposited with the Free Legal Aid. Even the said order was not complied with. Thereafter, eventually the matter was taken up on 28.03.2016, whereby on account of costs have not been paid, the drastic step had been taken.

Sufficient opportunities have been given to the petitioner to file reply over a period of one year. Even, thereafter the matter stood delayed inordinately by resorting to an application which was not maintainable and that was filed after the period of limitation on 01.07.2016 leading to the subsequent order being passed on 06.10.2016. (Annexure P-3). A period of more than 2 years has passed by since the proceedings had been initiated and the petitioners themselves had to be faulted. They have chosen not to put in their defence. In such circumstances, keeping in view the binding precedent of the Full Bench of this Court in the case of *Anand Parkash (supra)*, this Court is of the opinion that there is no scope for interference in the impugned order.

Accordingly, there is no merit in the present revision petition and the same is dismissed.

FEBRUARY 03, 2017
Naveen

(G.S. SANDHAWALIA)
JUDGE

Whether speaking/reasoned:
Whether Reportable:

Yes/No
Yes/No