

In the High Court of Punjab and Haryana at Chandigarh

111

CR No.2481 of 2018

Date of decision: 24.5.2018

NARESH KUMAR

.....petitioner

Versus

GURBACHAN SINGH AND OTHERS

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Navdeep Monga, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J (oral)

The evidence of the plaintiff-petitioner was closed after affording sixteen effective opportunities, but the plaintiff-petitioner failed to conclude his evidence. Even last opportunity was granted to the plaintiff-petitioner to conclude his evidence subject to payment of costs to be paid in the Legal Aid Cell.

A perusal of the impugned order would show that the cost was not paid by the plaintiff-petitioner. In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and anr., 1982(1) R.C.R. (Rent) 1**, Full Bench of this Court held that in the event of non-payment of cost on the adjourned date, it is mandatory on the part of the Court to disallow prosecution of suit or defence as the case may be. Awarding of cost to the aggrieved party, though is the subject matter of discretion of the Court in terms of Section

35-B CPC, but once that discretion is exercised and the same is not complied with by the defaulting party, it shall become mandatory on the part of the Court to disallow further prosecution of the suit or the defence as the case may be.

The aforesaid view was reiterated by the Delhi High Court in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007 (26) R.C.R. (Civil) 798 (Delhi)**, endorsing that the plain reading of Section 35-B(1) CPC would show that the Court is only required to see whether the costs have been paid or not. If the party does not pay the costs, then only course open to the Court is to disallow the prosecution of the case or the defence as the case may be.

Evidently, the cost has not been paid in the present case and the evidence of the plaintiff-petitioner has been closed by order of the Court. No illegality is detected in the impugned order.

The revision petition is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

May 24, 2018
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Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No