

232

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2949-2017

Date of decision : 16.04.2018

Kirpal Singh

... Petitioner(s)

Versus

Krishan Kumar Singla and another

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. Abhishek Sanghi, Advocate
for the petitioner.

Mr. Rahul Garg, Advocate
for respondent No.1.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the order dated 11.04.2017 (Annexure P-3), whereby the application moved by the plaintiff for striking out the defence of the defendant at the evidence stage, has been allowed.

Learned counsel for the petitioner-defendant submitted that respondent No.1/plaintiff instituted a suit for specific performance of the agreement to sell, in which, the defence of the petitioner-defendant for not filing the written statement within a statutory period as provided under Order 8 Rule 1 CPC was struck off, having not been complied with. Earlier the defendant was proceeded *ex parte* vide impugned order dated 08.08.2013, thereafter the said order was set aside vide order dated 03.07.2015 by allowing the petitioner-defendant to join the proceedings

subject to the payment of costs of ₹ 1500/-.

He further submitted that the costs of ₹1,500/- was paid, but the zimini orders did not reflect the same. However, at the time when the suit was listed for defendant's evidence, respondent No.1-plaintiff moved an application for striking out the defence of the petitioner-defendant for non-payment of the costs, which has erroneously been allowed. The said application at belated stage should not have been allowed. The entire focus of the Court should have been on the adjudication of the main controversy, thus, urges this Court for setting aside the impugned order, under challenge.

Mr. Rahul Garg, learned counsel appearing on behalf of No.1/plaintiff submitted that the conduct of the petitioner-defendant in adopting all delaying-tactics had writ large for having proceeded *ex parte* three times, even the costs was also not paid. The occasion to move an application only arose, when the proceedings in an application seeking amendment of the plaint culminated into passing of the order, therefore, there was a violation of provisions of Section 35-B of the Code of Civil Procedure, which can always be pressed into service at any point of time. There is no illegality and perversity in the impugned order, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties, appraised the paper book.

Admittedly, none of the parties has been able to point out that zimini orders ever reflected the payment and receipt of cost, but the fact of the matter is that the application for striking out the defence was moved at the stage of petitioner-defendant's evidence. During all this period, no such point was raised. Assuming for an arguments sake that cost had not been

paid, the Court below should have applied doctrine of acquiescence and should have called upon the parties for the purpose of decision of the suit by concluding the evidence as early as possible.

Counsel for the petitioner-defendant undertakes to pay the costs of ₹1500/-, though no receipt was taken as the costs was handed over to the counsel for other side. It is a normal practice that the costs is always offered by the lawyer and received by the opposite lawyer.

An application for striking out the defence was though pending, but was pressed into service only after decision of the application under Order 6 Rule 17 CPC. Be that as it may, the fact remains that respondent No.1/plaintiff was aware of the aforementioned application, but was apprehensive that by pursing that application, amendment application may not have been dismissed.

As an upshot of my observations, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside. The petitioner-defendant shall pay the costs within a period of two weeks against valid receipt.

Resultantly, the present revision petition stands allowed.

16.04.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No