

255

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

**Civil Revision No.3023 of 2018
Date of Decision: 17.05.2018**

SUNITA RANI CHORASIA

.....Petitioner

Vs

GURPAL SINGH

.....Respondent

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Salil Dev Singh Bali, Advocate
for the petitioner.

Mr. Sachin Rai Vaid, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the orders dated 21.02.2018 and 28.02.2018 passed by the Civil Judge (Jr. Divn.) Ambala in a suit titled 'Gurpal Singh vs. Sunita Rani'.

[2]. On 05.02.2018, one PW Gurpal Singh was present in Court, but he was not cross-examined by the defendant. Prayer for adjournment was allowed subject to payment of cost of Rs.500/- to be deposited with legal aid fund. The case was adjourned for 08.02.2018.

[3]. On 08.02.2018, an application was filed by the defendant for dismissal of the suit on the basis of agreement

being forged. The said application was dismissed with a cost of Rs.2000/- which was to be deposited with District Legal Services Authority, Ambala. The case was adjourned for cross-examination of plaintiff's witnesses for 09.02.2018.

[4]. On 09.02.2018, the Court recorded a fact that the examination-in-chief of PW-1 was recorded on 28.10.2014 and thereafter the witness was not cross-examined by the defendant. One and last opportunity was granted to defendant to cross-examine the witness subject to additional cost of Rs.4000/- to be deposited with the District Legal Services Authority, Ambala. It was made clear that in case witness is not cross-examined, the cross-examination of the said witness was to be considered nil. The case was adjourned for 15.02.2018 for cross-examination of witnesses of the plaintiff.

[5]. The case was ultimately taken up on 21.02.2018. Perusal of the said order would show that two PWs namely Gurpal Singh and Rajesh Kumar were present in Court. By that time, the cost accumulated to Rs.6500/- for which the defendant sought time for two days. The aforesaid reference was made to the proceedings of previous date.

[6]. On 28.02.2018, on seeing the persistent attitude of the defendant, the Court did not think it appropriate to adjourn the

case further as the defendant did not pay the cost of Rs.6500/-.

Considering the background, the cross-examination of the witnesses at the instance of defendant was treated to be nil and the defence was struck off for non-payment of cost under Section 35-B CPC.

[7]. During course of arguments, learned counsel for the petitioner showed his willingness to deposit the cost in order to avail one opportunity to cross-examine the witnesses.

[8]. On the other hand, learned counsel for the respondent vehemently opposed the prayer on the ground that the petitioner has not come to this Court with clean hands inasmuch as that in the order dated 15.03.2018 passed by the District Judge, Ambala in transfer application, the conduct of defendant has been highlighted even to the extent of finding her to be unscrupulous litigant as she has changed eight advocates during the short span. Filing of transfer application with the allegations against the Presiding Officer were found to be prima facie contemptuous in nature, however the Court after finding the defendant to be senior citizen, simply dismissed the application for transfer of the case.

[9]. 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 Court to disallow prosecution of suit or defence as the case may be. Awarding of cost to the aggrieved party has been left to the discretion of Court which is evident by the use of word 'may' in the Section 35-B CPC, but once that discretion has been exercised and costs have not been paid on the next date of hearing, then regarding the taking of consequential action, the word 'shall' has been used. In the event of failure on the part of party to pay cost, the Court would be within its jurisdiction to disallow the prosecution of the suit or the defence as the case may be. The Court can extend the time while exercising the powers under Section 148 CPC on sufficiency of cause shown by the defaulting party.

[10]. The view expressed by the Full Bench of this Court in **Shri Anand Parkash's** case (supra) was followed in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007(26) R.C.R. (Civil) 798 (Delhi)** wherein it was endorsed that 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.

[11]. In the instant case, repeated failure on the part of

petitioner in not honouring the order would show that the petitioner was not *bona fidely* conducting the case, rather involved in raising scandalous allegation even against the Presiding Officer while seeking transfer of case from him.

[12]. Taking into consideration the aforesaid facts, I do not find this case to be fit enough for granting any indulgence in favour of the petitioner, who is found to be not vigilant in pursuing her case in accordance with law.

[13]. This revision petition is accordingly dismissed.

May 17, 2018

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No