

In the High Court of Punjab and Haryana at Chandigarh

124

CR No.3586 of 2018

Date of decision: 25.5.2018

GURMEET SINGH

.....petitioner

Versus

DALJIT SINGH

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.A.K.Lamdharia, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(oral)

Petitioner has assailed the order dated 18.4.2018 passed by the Civil Judge (Jr.Divn.) Fatehgarh Sahib, whereby the application for setting aside ex parte order dated 15.9.2017, passed by the Executing Court was dismissed.

The ex parte judgment and decree dated 21.2.2015 was passed against the petitioner by the Civil Judge (Jr.Divn.) Fatehgarh Sahib. The suit for recovery was decreed against the petitioner. The plaintiff was held entitled to recover principal amount of ₹ 1,50,000/- being the sum of loan advanced on 23.11.2011 along with interest @ 9% per annum on the principal sum from 23.11.2011 upto pendente lite period. Future interest @ 6% from the date of decree till final realisation was also granted. Execution was carried out in which the petitioner was

represented by an Advocate, who appeared in the proceedings on 16.3.2017, 24.4.2017, 20.5.2017, 15.7.2017, 24.8.2017 and 15.9.2017, but never filed any objection despite last opportunity granted to him, subject to payment of costs. Neither the objections were filed nor the costs were deposited in the Executing Court.

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 costs 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 costs 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.

In the event of non payment of costs, the revision petition is not maintainable and the same is liable to be dismissed.

At this stage, learned counsel for the petitioner wishes to withdraw this petition.

Dismissed as withdrawn.

May 25, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No