

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

**CR No.5330 of 2018(O&M)
Date of Decision: 18.08.2018**

PARMINDER SINGH

.....PETITIONER

VERSUS

JASMAIL SINGH AND OTHERS

....RESPONDENTS

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

Present:Mr. S.S. Tiwana, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Perusal of the record would show that plaintiff filed a suit for damages for malicious prosecution. Plaintiff has already completed his evidence. Defendants were in process of leading evidence, but they did not lead any evidence despite last opportunity. Though the case is fixed for defendants evidence, but the application was filed by defendant No.5 for cross examination of PW 1. Even the cost imposed upon the petitioner was not paid.

[2]. Learned counsel for defendant No.5/petitioner submitted that the cross examination of the witness of the plaintiff was treated as nil as learned counsel for the defendants

could not cross examine the witness on 04.04.2018 on account of circumstances which were beyond the control of the counsel. The said opportunity was the last opportunity given to cross examine the witness. The cost imposed was also not paid.

[3]. In **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another, 1982(1) RCR (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.

[4]. The view expressed in **Shri Anand Parkash's case (supra)** was followed by the Delhi High Court in **Manohar Singh Vs. Shri D.S. Sharma and others, 2007 (26) RCR (Civil) 798 (Delhi)**, wherein it was endorsed 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.

[5]. In my considered opinion, on account of non-payment of costs, trial Court has rightly rejected the prayer for further cross examination of PW 1 at the instance of defendant No.5/petitioner. In the event of non-payment of costs, this revision petition is liable to be dismissed.

[6]. This revision petition is dismissed accordingly.

August 18, 2018

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**(RAJ MOHAN SINGH)
JUDGE**

Whether Reasoned/Speaking

Yes/No

Whether Reportable

Yes/No