

In the High Court of Punjab and Haryana at Chandigarh

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**CR No.7167 of 2018 (O&M)
Date of decision: 22.10.2018**

DHANI RAM

.....petitioner

Versus

KANWAR SINGH AND ANR

.....respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Balram Prashar, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.(oral)

A perusal of the impugned order would show that defendant No.1/ petitioner had already availed number of opportunities for leading evidence on 5.3.2018, 10.4.2018, 1.5.2018, 29.5.2018, 10.7.2018, 7.8.2018 and 4.9.2018. Even the cost imposed by the trial Court was not deposited in DLSA, Gurugram.

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.

Apparently, the costs were not paid by defendant No.1-petitioner, hence, no indulgence can be granted in favour of the petitioner.

The revision petition is accordingly dismissed.

October 22, 2018
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No