

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

CR No.8133 of 2018(O&M)
Date of Decision: 30.11.2018

Archana Sharma and another ... Petitioners

Vs

Braham Kumar and others ... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Om Pal Sharma, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

[1]. Petitioners have challenged the order dated 03.08.2018 passed by Civil Judge (Junior Division), Ludhiana vide which defence of defendants No.1 and 2/petitioners was struck off and order dated 25.10.2018 vide which application filed by the petitioners for recalling the order dated 03.08.2018 was dismissed.

[2]. Perusal of the record would show that amended written statement was required to be filed on 22.01.2018. The same was not filed despite number of adjournments. On 24.04.2018, last opportunity was granted to file amended written statement subject to payment of costs of Rs.500/- and the case was adjourned to 07.05.2018. On 07.05.2018, neither the

amount of cost(s) was paid, nor the needful was done in the context of filing amended written statement. Still last and final opportunity was granted to defendants No.1 and 2/petitioners to file the amended written statement on 22.05.2018. Even on 22.05.2018, amended written statement was not filed. Last opportunity was again granted to file the amended written statement subject to further cost(s) of Rs.500/-. Neither the cost(s) was paid on the adjourned date, nor the amended written statement was filed. Last opportunity was again granted to defendants No.1 and 2/petitioners to file amended written statement on 25.07.2018. On 25.07.2018, neither the amended written statement was filed, nor the earlier amount of cost(s) was deposited. Further last opportunity was granted subject to further cost(s) of Rs.1000/-, failing which the defence of the defendants was to be struck off. It was held that the payment of cost(s) was the condition precedent for further proceedings.

[3]. Perusal of the record would show that conditional order was not complied with and the defence of defendants No.1 and 2/petitioners was struck off vide order dated 03.08.2018. The application for recalling the order dated 03.08.2018 was also dismissed by taking into consideration the aforesaid attending facts and circumstances of the case.

[4]. 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 cost(s) 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(s) 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.

[5]. The aforesaid view has been reiterated by the Division Bench of Delhi High Court in **Manohar Singh Vs. Shri D.S. Sharma and others, 2007(26) RCR (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 cost(s) have been paid or not. If the party does not pay the cost(s), then only course open to the Court is to disallow the prosecution of the case or the defence as the case may be.

[6]. The aforesaid ratio has been followed by this Court in **CR No.2481 of 2018** titled **Naresh Kumar Vs. Gurbachan Singh and others** decided on 24.05.2018.

[7]. Owing to the conduct of defendants No.1 and 2/petitioners, I deem it appropriate not to interfere in the present

revision petition. The same is accordingly dismissed.

30.11.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No