

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

**CR No.8287 of 2018(O&M)
Date of Decision: 05.12.2018**

Tarlochan Singh

.....Petitioner

Versus

Rajinder Kumar Maingi and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Pranav Handa, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. Perusal of the record would show that Mr. H.V. Kohli, Advocate filed power of attorney on behalf of the defendant on 09.07.2018. The case was adjourned to 07.08.2018. Written statement was not filed and the case was further adjourned to 31.08.2018 subject to last opportunity, but still the written statement was not filed on 31.08.2018. Last opportunity was again granted subject to payment of cost(s) of Rs.500/- to be paid to the plaintiff. Cost(s) was not paid even on adjourned date. Still last opportunity was granted subject to payment of earlier cost(s). On 04.10.2018 also cost(s) was not paid and the

impugned order came to be passed.

[2]. 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 the 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.

[3]. The aforesaid view was also endorsed by Division Bench of Delhi High Court in **Manohar Singh Vs. Shri D.S. Sharma and others, 2007(26) RCR (Civil) 798 (Delhi)** by holding 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. This Court in **CR No.3586 of 2018** titled **Gurmeet Singh Vs. Daljit Singh** decided on 25.05.2018 has also followed the dictum of **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another's**

case (supra).

[4]. Non-payment of cost(s) would entail in dismissal of the revision petition as well. This revision petition is accordingly dismissed.

05.12.2018
Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No