

IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CR No.8413 of 2017 (O&M)  
Date of decision: 11.07.2018

Sakinder Kaur

..... Petitioner

Versus

Bahadur Singh and others

..... Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Samir Rathaur, Advocate for the petitioner.  
Mr. Karan Gupta, Advocate for respondents No.1 and 3.

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**B.S. Walia, J. (Oral)**

**CM No.5830-CII of 2018**

Application for impleading LR of the deceased respondent No.2

Avtar Singh is allowed subject to all just exceptions.

Applicants as mentioned in paragraph No.4 of the application are impleaded as LR of Avtar Singh (respondent No.2) for the purposes of the revision petition. Amended memo of parties is taken on record.

**Main case**

[1] Prayer in the revision petition under Article 227 of the Constitution of India is for the setting aside of order dated 23.10.2017 (Annexure P-1) passed by the learned Civil Judge (Junior Division), Mohali whereby the statements of PW-4, PW-5 and PW-6 recorded on 31.05.2017 were ordered not to be read into evidence and for grant of one opportunity to the petitioner/ plaintiff to tender costs to the respondents/defendants.

[2] Learned counsel for the petitioner/plaintiff contended that vide order dated 07.04.2017 (Annexure P-5) in CR No.1050 of 2017, this Court had granted one effective opportunity to the petitioner/plaintiff to adduce her entire evidence on payment of ₹ 10,000/- as costs. On application being moved by the petitioner/plaintiff, the case was listed for evidence on 31.05.2017. The petitioner/plaintiff, in furtherance of order dated 07.04.2017 (Annexure P-5), got prepared two drafts totaling ₹ 10,000/- for payment of costs to the respondents/defendants. On 31.05.2017, the examination-in-chief of PW Nos.4, 5 and 6 was recorded whereafter the case was adjourned to 03.07.2017 for cross-examination of the plaintiff-witnesses on application having been moved by the counsel for the respondents/defendants for deferring the cross-examination of the plaintiff-witnesses. Inadvertently, the petitioner's counsel did not hand over the drafts to the respondents/ defendants on the said date. No objection was taken by the respondents/ defendants counsel, nor was the aforementioned aspect of the matter noted by the learned trial Court in its order on 31.05.2017. On 03.07.2017, the Court could not take up the matter and the case was adjourned to 05.08.2017. In the meantime i.e. on 20.07.2017, an application was moved by the respondents/defendants for closing the evidence of the petitioner/ plaintiff on account of non-payment of costs in terms of order of this Court dated 07.04.2017 (Annexure P-5). The aforementioned application was allowed by the learned trial Court vide order dated 23.10.2017 (Annexure P-1) by directing that the examination-in-chief of PW-4, PW-5 and PW-6 recorded on 31.05.2017 not be read as evidence.

[3] Learned counsel for the petitioner/plaintiff contends that the bona fide of the petitioner/plaintiff is evident since draft for payment of

26.05.2017 i.e. before the date fixed i.e. 31.05.2017 and it was only due to inadvertence of the petitioner/plaintiffs counsel that the drafts representing the costs could not be handed over to the respondents/defendants or their counsel.

[4] Learned counsel further contends that be that as it may, in fact neither was any objection taken against non-payment of costs by the respondents/defendants before the learned trial Court nor did the learned trial Court take any note of non-payment of costs to the respondents/defendants and the trial Court simply adjourned the case for cross-examination of the petitioner/plaintiff-witnesses for 03.07.2017 on the application moved by the respondents/defendants.

[5] Learned counsel by relying upon the decision of the Full Bench of this Court in **Prem Sagar vs Phul Chand, 1983 (2) RCR (Rent) 405** contended that in the circumstances, in absence of the respondents/defendants having raised an objection on the date on which the evidence of the petitioner/plaintiffs witnesses was recorded, besides, the Court also not having taken note of non-payment of costs, moreover, the cross-examinations of PW-4, PW-5 and PW-6 having been got deferred by the respondents/defendants, payment of costs could be made even on the next date and the petitioner/plaintiff was still ready and willing to deposit the same subject to grant of one opportunity.

[6] Learned counsel for the respondents/defendants on the other hand relies upon the decision of the Full Bench of this Court in **Anand Parkash vs Bharat Bhushan, AIR 1981 Pb. & Hry. 269 (FB)** to contend that on account of non-payment of costs, the Court has no option but to strike-off the defence.

[7] I have considered the submissions of learned counsel for the parties. Admittedly, no objection was taken by the respondents/defendants with regard to non-payment of costs on the date on which the evidence of PW-4, PW-5 and PW-6 was recorded nor did the learned trial Court take note of the non-payment of costs. It also needs mention that the petitioner/plaintiff had already got prepared the drafts on 26.05.2017 for payment of costs to the respondents/defendants on the date fixed for recording of evidence of the petitioner/plaintiff's witnesses and it was only due to inadvertence that the drafts representing the costs to be paid could not be handed over to the respondents/defendants or their counsel on 31.05.2017. Besides, the matter is squarely covered by the Full Bench decision of this Court in **Prem Sagars case (Supra)**. Relevant extract of the same is reproduced as under :-

“1.   xxx   xxx   xxx

The only question that arises for determination is as to whether the defence of the defendants could be struck off on 10<sup>th</sup> October, 1981, because they failed to pay the costs imposed on 11<sup>th</sup> September, 1981, on 25<sup>th</sup> September, 1981, the date next following the date of the order, even though the costs were not demanded on 25<sup>th</sup> September, 1981, nor was this fact brought to their notice on that date.

xxx   xxx   xxx

2. to 15   xxx   xxx   xxx

16.       To conclude, both on principle and precedent, as also on the language of Section 35-B, the answer to the question posed at the very outset is rendered in the

negative. It is held that the party defaulting in the payment of costs on the date fixed for the payment thereof (on which date this issue is not at all raised) cannot on subsequent date or dates be barred afresh from further prosecuting the suit or the defence, as the case may be. ”

[8] In the light of the position as noted above, I am of the view that it would be in the interest of justice that the petitioner/plaintiff be allowed one opportunity to deposit the costs of ₹ 10,000/-. Accordingly, impugned order is set aside. Petitioner/plaintiff is allowed to deposit costs of ₹ 10,000/- within two weeks subject to further payment of costs of ₹ 10,000/- to the respondents. On costs being deposited, respondents/defendants would be granted opportunity to cross-examine plaintiffs-witnesses for which the learned trial Court shall grant appropriate time. It is made clear that payment of costs of ₹ 20,000/- is a condition precedent to the evidence of PW- 4, PW-5 and PW-6 being taken on record.

[9] Revision petition allowed in the aforementioned terms.

(B.S. Walia)  
Judge

11.07.2018  
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No