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

**Civil Revision No.2232 of 2017
Date of Decision: 07.03.2019**

RAM CHANDER

.....Petitioner

Vs

VIDHYA DEVI AND ANR

....Respondents

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

Present:Mr. D.V. Dhindsa, Advocate
for the petitioner.

Mr. Anuj Balyan, Advocate
for the respondents.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 19.07.2016 passed by the Addl. District Judge, Panchkula vide which appeal against the order dated 16.04.2015 passed by the Addl. Civil Judge (Sr. Divn.) Panchkula dismissing the application under Order 9 Rule 8 CPC was dismissed.

[2]. Perusal of the record would show that last opportunity was granted to the petitioner to conclude his evidence subject to payment of costs of Rs.1,000/-. On the adjourned date i.e. 17.02.2011, neither the plaintiff appeared in the Court, nor any

evidence was led. The amount of costs was also not paid. Faced with this situation, the trial Court had no alternative, but to dismiss the suit in default.

[3]. The application for restoration of the suit came to be filed only on 11.04.2012 i.e. after a period of about one year and two months and no application under Section 5 of the Limitation Act was filed for condonation of delay.

[4]. Learned counsel for the petitioner submitted that the case of the petitioner is under provisions of residuary Article 137 of the Limitation Act, 1963 on the strength of **Dalipa vs. Rulia, 1980(2) ILR (Punjab) 329.**

[5]. I have considered the issue involved in the present revision petition. Even if the suit is to be restored, on the basis of aforesaid ratio of **Dalipa's** case (supra), the plaintiff has not led any evidence on record as on 17.02.2011 and in such eventuality the trial Court had to proceed in terms of Order 17 Rule 3 CPC i.e. to decide the suit forthwith. The amount of cost (s) earlier imposed was not deposited by the petitioner.

[6]. In **Shri Anand Parkash vs. Shri Bharat Bhushan Rai and another, 1982 (1) RCR (Rent) 1, (Full Bench)** it was 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.

[7]. The aforesaid view was followed by the Division Bench of Delhi High Court in **Manohar Singh vs. Shri D.S. Sharma and others, 2007(26) RCR (Civil) 798 (Delhi).**

[8]. In view of aforesaid legal position, even if the suit is to be restored on 17.02.2011, there was no evidence available on record and the suit has to be proceeded in terms of Order 17 Rule 3 CPC. Moreover, in the event of non-deposit of costs, the plaintiff cannot be permitted to pursue the civil suit in view of mandatory requirement of Section 35-B CPC.

[9]. In view of above, there is no illegality in the impugned orders passed by the Courts below. This revision petition is accordingly dismissed.

March 07, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No