

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

CR No.2379 of 2017

Date of Decision:14.11.2019

Jaspal Singh

... Petitioner

Vs.

Balvir Singh

... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present : Mr. S.S. Salar, Advocate
for the petitioner.

Mr. Jatinder Singla, Advocate
for the respondent.

RAJ MOHAN SINGH J. (Oral)

During the course or arguments, it has emerged that vide order dated 11.11.2011, the case was adjourned for 9.1.2012 by the trial Court subject to payment of cost(s) of Rs.300/- to be paid by the defendant to the plaintiff's witness who could not be cross-examined by the defendant on 11.11.2011 and the witness was bound down for 9.1.2012. On 9.1.2012, neither the counsel for the defendant appeared nor cost(s) so imposed was paid. The defendant was proceeded against ex parte.

Learned counsel for the petitioner submitted that further prosecution of the suit or defence as the case may be

was to be disallowed in view of non payment of cost (s) in view of **Shri Anand Parkash v. Shri Bharat Bhushan Rai and another**; 1982 (1) RCR (Rent) 1 (Full Bench). Though the award of cost (s) to the aggrieved party is under the discretionary ambit of the Court in terms of Section 35-B CPC but once that discretion is exercised and the cost(s) was imposed then the same became mandatory on the part of the defendant-respondent to comply with the same. In the event of non-compliance, the Court was required to disallow further prosecution of the suit or the defence as the case may be. The aforesaid view was followed by the Division Bench of Delhi High Court in **Manohar Singh v. Shri D.S. Sharma and others**; 2007 (26) RCR (Civil) 798 (Delhi) and also by this Court in CR No.3586 of 2018 titled **Gurmeet Singh v. Daljit Singh**; decided on 25.05.2018 and CR-3926-2019 titled **Jeet Singh v. Gurmeet Singh and others** decided on 27.8.2019.

Learned counsel for the petitioner further submitted that even time barred application has been allowed by the lower Appellate Court.

In the light of the aforesaid facts, it would be just and appropriate to set aside the impugned order dated 6.2.2017 passed by the lower Appellate Court.

At this stage, learned counsel for the respondent states that the factum of non-payment of cost (s) has to be

ascertained.

In view of aforesaid submission, I deem it appropriate to dispose of this revision petition with liberty to the respondent to move an appropriate application for recalling of order in case statements of facts made here-in-above are found to be otherwise.

With the aforesaid observation, this revision petition is disposed of.

14.11.2019
rajeev

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**