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

**Civil Revision No.5489 of 2018 (O&M)
Date of Decision: 06.02.2019**

NASEEM AKHTAR

.....Petitioner

Vs

GULFSHAH AND OTHERS

....Respondents

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

Present: Mr. Saqib Ali Khan, Advocate
for the petitioner.

Mr. Mandeep K. Dhot, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has challenged the order dated 27.07.2018 passed by the Civil Judge (Jr. Divn.) Malerkotla, whereby defence of the petitioner was struck off for want of payment of costs and written statement.

[2]. Perusal of the record would show that vide order dated 28.05.2018, a request for adjournment was accepted subject to payment of costs of Rs.500/- to be paid to the plaintiff. The case was adjourned for 03.07.2018. On 03.07.2018, the cost(s) was paid by defendants No.1 and 4 and written statement on behalf

of defendant No.1 was filed. Costs on behalf of defendants No.3 and 4 were not paid. Defendant No.4 moved an application for seeking direction against defendant No.3 to give name of the firm in whose favour she mortgaged her property. The case was adjourned to 27.07.2018 with additional costs of Rs.200/- to be paid by defendants No.3 and 4.

[3]. On the adjourned date i.e. 27.07.2018, neither the costs were paid, nor any written statement was filed by defendants No.3 and 4. The trial Court after finding no alternative passed the impugned order, thereby striking off the defence of defendant No.3 (petitioner) and defendant No.4 for want of payment of costs as well as written statement.

[4]. I have considered the submissions made by learned counsel for the parties.

[5]. In **Shri Anand Parkash vs. Shri Bharat Bhushan Rai and another, 1982 (1) RCR (Rent) 1**, Full Bench of this Court has 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.

[6]. 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.

[7]. The aforesaid view 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 and **CR No.8133 of 2018** titled '**Archana Sharma and another vs. Braham Kumar and others**', decided on 30.11.2018.

[8]. At last, learned counsel for the petitioner made feeble attempt to show that amount of cost(s) was deposited on 27.08.2018.

[9]. Perusal of order dated 27.08.2018 passed by the trial Court would show that the amount of cost(s) was paid, but the written statement on behalf of defendant No.2 was not filed. The order is relatable to defendant No.2 and the same was passed subject to concessional opportunity to him only. The said order

cannot be relied by the petitioner/defendant No.3 to show that the amount of cost(s) was paid by him alone. Even otherwise, there cannot be any such rectification of order dated 27.07.2018 at a subsequent stage, without challenging the same, in an appropriate manner.

[10]. In view of aforesaid legal position, no exception is made out in the present case. This revision petition is found to be totally bereft of merits and the same is accordingly dismissed.

February 06, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No