

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

Civil Revision No.5899 of 2018

Date of Decision: 04.04.2019

M/s Mittal Rubber Udyog Thr its Prop.Petitioner

Vs

M/s A.B.C. Rubber Produces through it Prop. & another

....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Gaurav Singla, Advocate
for the petitioner.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has preferred this revision petition against the order dated 19.02.2018 passed by the Civil Judge (Jr. Divn.) Faridabad vide which the suit of the plaintiff/petitioner was dismissed for non-payment of costs under Section 35-B CPC.

[2]. Perusal of the impugned order would show that on 19.02.2018, the case was fixed for service of the defendants subject to payment of costs of Rs.1,000/- to be deposited in DLSA Faridabad.

[3]. Perusal of the record would further show that presence of defendants No.1 and 2 was sought to be secured through publication in the newspaper on deposit of publication charges by the plaintiff. The order was passed by the trial Court to that effect on 21.02.2017. Thereafter on 24.03.2017, 01.05.2017, 04.07.2017 and 28.08.2017, it was noticed by the

trial Court that the needful could not be done for want of deposit of publication charges by the plaintiff.

[4]. Plaintiff was directed to deposit the publication charges and last opportunity was granted to him on 28.08.2017, still publication charges were not deposited by the plaintiff and ultimately on 11.12.2017, one more opportunity was granted to the plaintiff subject to payment of costs of Rs.1,000/- to be deposited in the DLSA Faridabad. The publication charges were required to be deposited within 10 days from the date of passing of the order dated 11.12.2017. The publication against the defendants was ordered to be issued for 19.02.2018. On 19.02.2018, the impugned order came to be passed. The amount of costs as well as publication charges were not deposited. The payment of costs was the condition precedent for further prosecution of the suit.

[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]. In the instant case, the conduct of the plaintiff has been noticed by the trial Court on number of dates and till the date of passing of the impugned order, the plaintiff did not deposit publication charges as well as amount of costs imposed as a last resort.

[8]. Owing to the conduct of the plaintiff/petitioner this Court does not find any error of jurisdiction in the impugned order passed by the trial Court. This revision petition is found to be devoid of merits and the same is accordingly dismissed.

April 04, 2019

**(RAJ MOHAN SINGH)
JUDGE**

Atik

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No