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

**Civil Revision No.6517 of 2018 (O&M)
Date of Decision: 30.09.2019**

KASAMPetitioner
Vs
JAKIR HUSSAINRespondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. C.B. Goel, Advocate
for the petitioner.

None for the respondent.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has laid challenge to the order dated 31.08.2018 passed by the Civil Judge (Junior Division) Mewat vide which the application for leading evidence/additional evidence after setting aside the order dated 10.08.2018 passed by the trial Court was accepted thereby giving one and final opportunity to the defendant to lead his evidence.

[2]. Perusal of the record would show that vide order dated 09.02.2018, the trial Court adjourned the case for defendant's evidence at his own responsibility for 16.03.2018. On 16.03.2018, similar order was passed and the case was adjourned for 30.03.2018. The case was thereafter adjourned to 27.04.2018 i.e. the date on which cost(s) of Rs.800/- was imposed upon the defendant and last opportunity was ordered

to remain intact.

[3]. Perusal of the record would further show that the aforesaid cost(s) was not paid on the adjourned date i.e. on 25.05.2018 and further cost(s) of Rs.1500/- was imposed to be deposited in DLSA. However, the amount of cost(s) was not paid on the adjourned date and the trial Court further granted last opportunity subject to imposition of further cost(s) of Rs.500/- thereby making the total cost(s) of Rs.2000/- to be deposited in DLSA. Last opportunity was granted for 10.08.2018. On 10.08.2018 also neither the cost(s) was paid, nor any evidence was brought by the defendant. The trial Court after noticing some incriminating facts closed the evidence of defendnat by order of the Court and framed issued

[4]. Thereafter, an application was filed for leading evidence/additional evidence by the defendant by setting aside the order dated 10.08.2018 in which indulgence was granted by the trial Court vide the impugned order.

[5]. It appears from the record that different amounts towards cost(s) were imposed on different occasions, however the same were not paid even for once.

[6]. 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.

[7]. 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.

[8]. In view of aforesaid legal position, the impugned order dated 31.08.2018 passed by the Civil Judge (Junior Division) Mewat is set aside. This revision petition is allowed. Normal consequences to follow.

September 30, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No