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

**CR No.7195 of 2018 (O&M)
Date of Decision:-04.12.2019**

Parveen Kumar and others

...Petitioners

Versus

Nisha Gupta and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Ms. Bhanvi Sood, Advocate for
Ms. Aditya Jain, Advocate
for the petitioners.

RAJ MOHAN SINGH, J. (Oral)

Perusal of the impugned order would show that the defence of the defendants-petitioners was struck off for want of written statement and payment of cost(s). The cost(s) imposed was not paid despite grant of last opportunity. Written statement was not filed nor the amount of cost(s) was paid on the date of passing of impugned order.

Learned counsel for the petitioners submitted that previous amount of cost(s) was paid/deposited on 10.08.2018 and the same was received without any protest by the plaintiff, however, written statement filed by the petitioners was kept in abeyance due to striking off the defence of the petitioners vide

impugned order dated 17.07.2018.

Admittedly, the amount of cost(s) was not paid as on the date of passing of impugned order. In the event of non-payment of cost(s) further prosecution or the defence could not be allowed by the Court.

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 the prosecution of suit or defence as the case may be. Though the award of costs to the aggrieved party is discretion of the Court in terms of Section 35-B CPC, but once that discretion is exercised and the amount of cost(s) is imposed and the same is not complied with by the defaulting party, then 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.

The aforesaid view has also been reiterated in **Manohar Singh Vs. Shri D.S. Sharma and others, 2007 (26) RCR (Civil) 798 (Delhi)**. It was held that the only course open to the Court is to disallow further prosecution of the case or defence as the case may be in the event of non-deposit of cost(s) within time. Even this Court in **CR No.3586 of 2018** titled **Gurmeet Singh Vs. Daljit Singh** decided on 25.05.2018, **CR No.3926 of 2019** titled **Jeet Singh vs Gurmeet Singh and others** decided

on 27.08.2019 and CR No.6178 of 2019 titled Gurmit Singh Vs. Gurpal Singh and others decided on 27.09.2019 has followed the aforesaid view. No exception can be made out in the present case for any diversion from the view expressed hereinabove.

In view of above, this revision petition is accordingly, dismissed.

04.12.2019
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(Raj Mohan Singh)
Judge

Whether speaking /reasoned
Whether Reportable

Yes / No
Yes / No