

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

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**CR No.7358 of 2017(O&M)
Date of Decision: 19.11.2019**

GAUSHALA PINJRA POLE (REGD.)

.....Petitioner

Versus

ANIL KUMAR

.....Respondent

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

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Rajeev Sharma, Advocate
for the respondent.

RAJ MOHAN SINGH, J.(Oral)

Petitioner has challenged the order dated 31.7.2017, passed by Civil Judge (Sr.Divn.) Jalandhar, vide which warrants of attachment of account of the petitioner/ judgment debtor in execution was ordered.

Perusal of the record would show that vide order dated 31.8.2015, ex parte award dated 1.8.2013 was set aside subject to payment of cost(s) of Rs.5,000/-. The amount of cost (s) was not paid on 19.10.2015 and authorized representative of the petitioner-Management withdrew his authority from the case. Since the Management did not make payment of cost(s) as per order dated 31.8.2015, therefore, the conditional order setasiding the ex parte award was withdrawn. Therefore, in execution of the award, impugned order has been passed.

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 costs 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 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)**. The only course open to the Court is to disallow further prosecution of the case or defence as the case may be if the amount of cost(s) is not deposited by the defaulting party on the next date. Even this Court in **CR No.3586 of 2018** titled **Gurmeet Singh Vs. Daljit Singh** decided on 25.05.2018 and **CR No.3926 of 2019** titled **Jeet Singh vs Gurmeet Singh and others** decided on 27.08.2019 has followed the dictum as laid down in **Shri Anand Parkash's case (supra)**.

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

November 19, 2019

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Whether reasoned/speaking

**(RAJ MOHAN SINGH)
JUDGE**

Yes/No