

114

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

CR No. 1161 of 2019 (O&M)
Date of Decision: 19.03.2019

Chiranji Lal

-Petitioner

Vs

Parhlad Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Rajnish K. Gupta, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J.

1. Petitioner has assailed the order dated 28.08.2017 passed by Civil Judge (Junior Division), Pathankot vide which evidence of the plaintiff was closed by order of the Court.

2. Liberty was given to pay the previous costs on the next date of hearing. The case was accordingly adjourned to 11.09.2017 for DWs. On 28.08.2017, no PW was present. The Court found that the plaintiff could not concluded his evidence despite numerous opportunities even with imposition of costs.

3. Perusal of interlocutory orders dated 07.04.2017, 25.04.2017, 10.05.2017, 23.05.2017, 22.07.2017 and 05.08.2017 would show inaction on the part of the petitioner-plaintiff. Order dated 07.04.2017 would show that previous costs was paid. PWs were present and they were examined in

examination-in-chief. Cross-examination was deferred at the instance of the defendant and the case was adjourned to 25.04.2017 for cross-examination of the aforesaid witnesses as well as for leading remaining evidence of the plaintiff.

4. On the adjourned date, aforesaid witnesses were present for cross-examination but they were not cross-examined at the request of the defendant and the case was further adjourned to 09.05.2017 for the same purpose subject to last opportunity.

5. The Presiding Officer was to avail leave on 09.05.2017, therefore, the case was taken up and was further adjourned to 23.05.2017 for the same purpose. On 23.05.2017, PW1 was present and was partly examined. His cross-examination was further deferred at the instance of the defendant. The case was adjourned to 12.07.2017 for cross-examination of PW1 as well as for entire evidence of the plaintiff. On 12.07.2017, no PW was present. Further adjournment was granted, subject to payment of costs of Rs.500/- to be deposited in District Legal Services Authority, with last opportunity, failing which evidence of the plaintiff was to be closed by order. The case was adjourned to 10.08.2017.

6. The Presiding Officer was to avail leave on the date fixed, therefore, the case was taken up on 05.08.2017 and was

adjourned to 28.08.2017. On 28.08.2017, impugned order came to be passed.

7. There is a recital in the impugned order that previous costs as imposed vide order dated 12.07.2017 was to be paid on the next date i.e. 11.09.2017.

8. Perusal of order dated 11.09.2017 did not show factum of payment of costs as imposed on 12.07.2017. Order dated 11.09.2017 would show that no DW was present and the case was adjourned to 25.09.2017 at own responsibility of the defendant.

9. Even the conduct of the defendant was also at par with plaintiff when he did not lead any evidence despite number of opportunities on 11.09.2017, 25.09.2017, 25.10.2017, 08.11.2017, 05.12.2017. On 15.12.2017, DW1 Parhlad Singh was partly examined and his cross-examination was deferred at the instance of the plaintiff and the case was adjourned to 17.01.2018 for cross-examination of DW1. On 17.01.2018, the case was further adjourned to 05.02.2018. On 05.02.2018, no DW was present and the case was further adjourned to 22.02.2018 with last opportunity and thereafter to 14.03.2018 and so on for the same purpose.

10. On 10.10.2018, learned counsel for the plaintiff requested before the Court that against the order vide which his

evidence was closed, Civil Revision has been preferred in the High Court. Cross-examination of DW1 was accordingly deferred to 26.10.2018 and thereafter, further adjournments were granted on that premise on 20.10.2018. In the meanwhile, DW2 was completely examined but cross-examination of DW1 was not done by the plaintiff even on 13.12.2018, 08.01.2019, 05.02.2019 and 20.02.2019.

11. The conduct of the plaintiff remained pathetic throughout while leading his evidence as well in not cross-examining DW1. Even costs imposed on 12.07.2017 was not deposited as per order dated 11.09.2017.

12. In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and anr., 1982(1) R.C.R. (Rent) 1**, Full Bench of this Court 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 prosecution of suit or defence as the case may be. Awarding of costs 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.

13. The aforesaid view was reiterated by the Delhi High

Court in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007**

(26) R.C.R. (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 costs have been paid or not. If the party does not pay the costs, then only course open to the Court is to disallow the prosecution of the case or the defence as the case may be.

14. For the reasons recorded hereinabove, I find that no indulgence can be granted in favour of the petitioner who remained passive throughout in conducting his case at different stages.

15. This revision petition is accordingly, dismissed.

19.03.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No

2. Whether reportable : Yes/No