

CR No. 1509 of 2019
CR No. 1513 of 2019 (O&M)

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

CR No. 1509 of 2019
Date of Decision: 05.03.2019

Asgar and others

-Petitioners

Vs

Shokat and others

-Respondents

CR No. 1513 of 2019 (O&M)

Asgar and others

-Petitioners

Vs

Shokat and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Ashish Gupta, Advocate,
for the petitioners.

RAJ MOHAN SINGH, J. (ORAL)

Vide this common order, Civil Revision No.1509 of 2019 titled 'Asgar and others vs Shokat and others' and Civil Revision No.1513 of 2019 (O&M) titled 'Asgar and others vs Shokat and others' are being decided.

Common facts are being noticed.

Petitioners are aggrieved against the order dated 25.02.2019 passed by Additional Civil Judge (Senior Division), Mewat vide which defendants evidence was closed by order of

the Court.

Perusal of the record would show that on 08.01.2019, no DW was present. The case was adjourned to 21.01.2019. On the adjourned date also, there was no evidence of the defendants available before the Court and the case was further adjourned to 06.02.2019 and a costs of Rs.300/- was imposed with last opportunity to the defendants to lead their evidence. On the adjourned date also i.e. 13.02.2019, there was no evidence of the defendants available before the Court, nor the amount of costs was paid. The Court granted one more indulgence with a deeming fiction that the defendants may lead their evidence on 25.02.2019, failing which evidence of the defendants was to be closed. Even on 25.02.2019, neither the evidence was led nor the amount of costs was paid. The Court had no option but to close the evidence by order of the Court.

Learned counsel for the petitioners submits that though the amount of costs was not paid in time but the same was paid on 27.02.2019. The material produced by the petitioners is silent about the order under which the aforesaid amount of costs was paid.

In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and another, 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 discretion of the Court in terms of Section 35-B of the Code of Civil Procedure, 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.

In the instant case, the interlocutory orders passed on 06.02.2019 and 13.02.2019 are indicative of the fact that the amount towards costs was to be deposited by the petitioners in time. Even in the order dated 13.02.2019, a deeming fiction was also observed that in the event of non-payment of costs, evidence of the defendants shall be deemed to be closed on the adjourned date. Despite the aforesaid alarming situation, defendants did not adhere to comply with the order passed by the Court on earlier occasion and made themselves liable for the passing of impugned order.

The ratio in **Shri Anand Parkash's case (supra)** was reiterated by the Delhi High Court in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007 (26) R.C.R. (Civil) 798 (Delhi)**. Even this Court in Civil Revision No.3586 of 2018 titled 'Gurmeet Singh vs Daljit Singh' decided on 25.05.2018 has followed the

dictum as laid down in **Shri Anand Parkash's case (supra)**.

In view of aforesaid legal position, I see no justification to interfere in the impugned order.

Both the revision petitions are accordingly, dismissed.

Since the revision petitions have been dismissed on merits, therefore, there is no necessity of passing any order in the application for bringing on record legal representatives of deceased-petitioner No.16 in Civil Revision No.1513 of 2019.

05.03.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No