

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

CR No.2369 of 2019

Date of decision : October 04, 2019

Rajender

..... Petitioner

Versus

Ishwar Singh

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:- Mr. Shubham Jain, Advocate for
Mr. Ajay Ghangas, Advocate for the petitioner.

Mr. Chetan Kapoor, Advocate for the respondent.

RAJ MOHAN SINGH J. (ORAL)

Petitioner has preferred this revision petition against the order dated 15.10.2018 passed by learned Addl. Civil Judge (Sr. Divn.), Gannaur, vide which the defence of the petitioner was struck off for want of written statement.

A perusal of the record would show that the petitioner had appeared before the trial Court on 18.09.2017 and thereafter, the case was adjourned on number of occasions for filing written statement and for filing reply to the injunction application. Vide order dated 02.12.2017, even an amount of Rs.500/- was imposed towards cost(s) for non-filing of the written statement. The said amount was not paid by the

defendant and he was proceeded against ex parte, vide order dated 02.02.2018. The ex parte proceedings were set aside on the basis of no objection shown by the learned counsel for the plaintiff, however, subject to cost(s) of Rs.700/- to be paid to the plaintiff. The case was adjourned for 07.08.2018 for filing written statement and reply to the injunction application by the defendant. The needful was not done even thereafter nor the amount of cost(s) was paid by the defendant till the date i.e. 15.10.2018 on which the defence of the defendant-petitioner was struck off.

On 10.05.2019, the case was adjourned by this Court as learned counsel for the petitioner wanted to bring on record the necessary material to show that amount of cost(s) was duly paid by the petitioner. Today, he has produced the receipt dated 24.05.2019 in a sum of Rs.700/- which was received by the Sub Divisional Legal Services Authority, Gannaur. There is no reference of the payment of amount of Rs.500/-, which was earlier imposed by the defendant-petitioner.

A perusal of the record would also show that receipt dated 24.05.2019 is just an effort to create evidence after passing of order dated 10.05.2019 by this Court.

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.

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.

In the event of non payment of costs, the revision petition is not maintainable and the same is liable to be dismissed.

Dismissed.

(RAJ MOHAN SINGH)
JUDGE

October 04, 2019

sarita

Whether speaking / reasoned

Yes / No

Whether Reportable:

Yes / No