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

CR No. 3165 of 2019 (O&M)
Date of Decision: 14.05.2019

Daulatram

-Petitioner

Vs

Shiv Singh

-Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. B.S. Tewatia, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has challenged the order dated 28.03.2019 passed by Civil Judge (Senior Division), Palwal vide which defence of the petitioner-defendant was struck off for want of written statement and for not paying the amount of cost(s) already imposed.

2. On 28.03.2019, the case was fixed for filing written statement and reply to injunction application subject to last opportunity and payment of cost(s) of Rs.500/- which was to be deposited in DLSA, Palwal. Petitioner neither paid the cost(s) nor filed reply to injunction application.

3. Petitioner had already availed last opportunity to file written statement but the written statement was not filed within

statutory period of 90 days which had already elapsed.

4. 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.

5. 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 plain reading of Section 35-B(1) CPC would show that the Court is only required to see whether the amount of cost(s) has been paid or not. If the party does not pay the cost(s), then only course open to the Court is to disallow the prosecution of the case or the defence as the case may be.

6. The aforesaid proposition has been followed by this Court in Civil Revision No.3586 of 2018 titled 'Gurmeet Singh vs Daljit Singh ' decided on 25.05.2018.

7. For the reasons recorded hereinabove, I do not wish to interfere in this revision petition.

8. This revision petition is accordingly, dismissed.

14.05.2019

Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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