

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

**CR No.3456 of 2019(O&M)
Date of Decision: 23.05.2019**

**SSG Pharma Pvt. Ltd. and others Petitioners
Versus
Raman Kumar Respondent**

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

Present: Mr. Anoop Singla, Advocate
for the petitioners.

RAJ MOHAN SINGH, J.

[1]. Petitioners have challenged the order dated 10.04.2019 passed by Additional Civil Judge (Senior Division), Bathinda vide which evidence of the defendants/petitioners was closed by order of the Court.

[2]. The evidence of the defendants/petitioners was closed on the premise that no evidence was available on the date fixed despite last opportunity and imposition of costs. Defendants/petitioners had already availed five effective opportunities. Finding no justification for further adjournment, evidence of the defendants/petitioners was closed.

[3]. Perusal of the record would show that the evidence of the plaintiff was closed on 22.02.2019. Thereafter, evidence of the defendants started. No evidence was present on 13.03.2019

and 27.03.2019. On 02.04.2019, no evidence of the defendants was present despite last opportunity. Final opportunity was granted subject to payment of costs of Rs.200/-, failing which evidence of the defendants was to be closed with deeming fiction. The case was adjourned to 10.04.2019. On 10.04.2019, neither the amount of costs was paid, nor any evidence was brought by the defendants. Order dated 02.04.2019 was passed, clarifying that in the event of not leading any evidence and not paying the costs, the evidence shall be deemed to be closed. It was passed with a deeming fiction. Even order dated 25.04.2019 shows that the defendants were not alive to the previous orders. Six effective opportunities were granted to the defendants. Even the cost(s) was imposed. Neither the amount of costs was paid, nor evidence was led.

[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 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.

[6]. In view of non-payment of costs, defendants/petitioners cannot be granted any indulgence for further prosecution of the case. Even six effective opportunities were granted including last opportunity with payment of costs. The conduct of the defendants/petitioners is not such which would entitle them to seek indulgence of this Court.

[7]. In view of above, the present revision petition is dismissed.

23.05.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No