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

**Civil Revision No.3438 of 2019
Date of Decision: 23.05.2019**

Raj Kaur

.....Petitioner

Vs

Suchcha Singh and others

....Respondents

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

Present: Mr. Satbir Singh Gill, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has challenged the order dated 01.05.2019 passed by the Civil Judge (Jr. Divn.) Ellenabad vide which defence of defendant No.2/petitioner was struck off.

[2]. Perusal of the record would show that despite last opportunity that too subject to payment of costs, written statement was not filed by defendant No.2/petitioner. Neither the amount of cost(s) was paid, nor written statement was filed. Ultimately the trial Court had no option, but to struck off defence of the petitioner. Six effective opportunities in a span of more than seven months were availed by the petitioner, but still written statement was not filed.

[3]. I have considered the submissions made by learned counsel for the petitioner.

[4]. Though Order 8 Rule 1 CPC is couched in a mandatory overtone, but the impact of the same is directory in nature. The Hon'ble Apex Court in **M/s SCG Contracts India Pvt. Ltd., vs. K.S. Chamankar Infrastructure Pvt. Ltd. & Ors., 2019(2) R.C.R. (Civil) 249** has reconsidered the earlier precedents and held that ordinarily a written statement is to be filed within 30 days. However, the same can be extended beyond a grace period of 90 days, subject to payment of such costs as may be deemed fit by the Court to allow filing of written statement by the defendant. Beyond the period of 120 days from the date of service of summons, the defendant shall not be permitted to file written statement. Defendant shall forfeit the right to file written statement and the Court shall not allow written statement to be taken on record. In such eventuality, the Court has no further power to extend the time beyond the period of 120 days.

[5]. Evidently, defendant No.2/petitioner appeared before the Court on 26.09.2018 pursuant to issuance of notice. The written statement was not filed till 01.05.2019 i.e. the date of passing of the impugned order. The aforesaid period is certainly a period beyond 120 days and due to that defendant No.2/petitioner shall forfeit right to file written statement on the

strength of **M/s SCG Contracts India Pvt. Ltd.'s** case (supra).

[6]. Secondly, non-payment of costs imposed on earlier occasion would attract ratio of **Shri Anand Parkash vs. Shri Bharat Bhushan Rai and Anr., 1982(1) R.C.R. (Rent) Full Bench,** wherein it was held that in the event of non-payment of cost(s) on the adjourned date, it is mandatory on the part of the Court to disallow prosecution of the suit or defence as the case may be. Awarding of cost(s) 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 amount of cost(s) imposed is not paid, then 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.

[7]. The aforesaid view was followed in **Manohar Singh vs. Shri D.S. Sharma & Ors., 2007(26) R.C.R. (Civil) 798 (Delhi).**

A plain reading of Section 35-B(1) CPC would show that the Court is only required to see whether the 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 prosecution of the case or the defence as the case may be. Concededly, the amount of cost(s) was not paid by the petitioner. On this ground also further prosecution/defence of the case cannot be allowed at the instance of the petitioner/defendant No.2.

[8]. For the reasons recorded above, this revision petition is found to be totally devoid of merits and the same is accordingly dismissed.

May 23, 2019

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No