

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

CR No. 3738 of 2019 (O&M)

Date of Decision: 10.07.2019

Nirmal Singh

-Petitioner

Vs

Sarabjit Kaur and another

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Dilpreet Singh Gandhi, Advocate,
for the petitioner.

RAJ MOHAN SINGH, J. (ORAL)

Petitioner has challenged the order dated 10.04.2019 passed by Civil Judge (Junior Division), Amritsar vide which defence of defendant-petitioner was struck off.

Perusal of the impugned order would show that defendant had appeared in the case on 22.10.2018. Written statement was not filed till 10.04.2019 and the amount of cost(s) was also not deposited.

In view of law laid down in **M/s SCG Private Limited vs KS Infrastructure and others, 2019 RCR (Civil) 249**, the Court cannot grant extension beyond 120 days from the date of service of summon. The period upto 90 days is discretionary, subject to payment of costs, but the period beyond 120 days would forfeit the right of the defendant to file the written statement.

Even the amount of cost(s) imposed by the Court on earlier occasion was not deposited. In **Shri Anand Parkash vs Shri Bharat Bhushan Rai and another, 1982(1) RCR (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.

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, no indulgence can be granted in favour of the petitioner.

This revision petition is accordingly, dismissed.

10.07.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

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