

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

**CR No.5114 of 2019(O&M)
Date of Decision: 27.08.2019**

CCC Infrasys Pvt. Ltd.

.....Petitioner

Versus

Simmro Infrastructure & Developers (P) Ltd. and others

.....Respondents

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

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

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the orders dated 06.01.2017 and 19.02.2018 passed by Civil Judge (Junior Division), Amritsar.

[2]. Vide order dated 06.01.2017, trial Court dismissed the suit in default as none appeared on behalf of the plaintiff when the case was fixed for evidence of the plaintiff with extra opportunity after last opportunity granted by the Court. No evidence was produced by the plaintiff. An application was moved for restoration of the suit.

[3]. Trial Court found that the plaintiff was being

represented by Sh. Pardeep Saini, Advocate. The application for temporary injunction filed by the plaintiff was dismissed on 12.04.2016 and the issues were framed. The case was fixed for 18.05.2016 for evidence of the plaintiff. No evidence of the plaintiff was produced on 18.05.2016. The case was adjourned to 28.07.2016. On the adjourned date also, no evidence of the plaintiff was produced. On the request of learned counsel for the plaintiff, the case was adjourned to 23.08.2016 subject to last opportunity. On 23.08.2016 again no evidence of the plaintiff was produced. One more opportunity was granted with an endorsement of extra opportunity after last opportunity for the evidence of the plaintiff and the case was accordingly adjourned to 23.09.2016. On the adjourned date i.e. 23.09.2016, again the same situation persisted. On the request of learned counsel for the plaintiff, the case was adjourned to 21.10.2016, however with last opportunity subject to costs of Rs.300/-. On 21.10.2016 although the cost(s) was deposited in compliance of order dated 23.09.2016, but no evidence was led by the plaintiff and on the request of learned counsel for the plaintiff, one extra opportunity after last opportunity was granted to the plaintiff for leading evidence subject to further costs of Rs.500/- and the case was adjourned to 09.11.2016. No evidence was produced even on 09.11.2016. Again on the request of learned counsel for the

plaintiff, one extra opportunity was granted with an endorsement of last opportunity subject to costs of Rs.1000/- and the case was adjourned to 02.12.2016. Same thing persisted even on 02.12.2016. The case was adjourned to 06.01.2017 with the same conditions subject to further costs of Rs.2000/-. On 06.01.2017, none appeared on behalf of the plaintiff, nor the amount of costs was deposited. No evidence was led by the plaintiff. The suit was dismissed in default on 06.01.2017.

[4]. Evidently, the amount of costs of Rs.500/-, Rs.1000/- and Rs.2000/- awarded against the plaintiff on three occasions was not deposited.

[5]. In **Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another, 1982(1) RCR (Rent) 1 (Full Bench)**, it was 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 the prosecution of suit or defence as the case may be. Though the award of costs to the aggrieved party is discretion of the Court in terms of Section 35-B CPC, but once that discretion is exercised and the cost(s) is imposed and the same is not complied with by the defaulting party, 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.

[6]. The aforesaid view has also been reiterated in

Manohar Singh Vs. Shri D.S. Sharma and others, 2007 (26)

RCR (Civil) 798 (Delhi). The only course open to the Court is to disallow further prosecution of the case or defence as the case may be if the amount of cost(s) is not deposited by the defaulting party on the next date. Even this Court in **CR 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)**.

[7]. The conduct of the plaintiff in pursuing the case is not such which would attract any sympathetic consideration by this Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

27.08.2019

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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking Yes/No

Whether reportable Yes/No