

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

**CR No.5079 of 2019(O&M)
Date of Decision: 26.08.2019**

Gurpreet Singh Gill

.....Petitioner

Versus

Gurdev Singh and another

.....Respondents

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

Present:Mr. Tarun Sharma, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 11.07.2019 passed by Additional Civil Judge (Senior Division), Ferozepur, vide which evidence of the plaintiff/petitioner was closed by order of the Court.

[2]. Perusal of the record would show that issues were framed on 13.04.2018 and the case was adjourned to 14.05.2018 for evidence of the plaintiff/petitioner. No evidence of the plaintiff was present on 14.05.2018 and the case was

adjourned to 24.07.2018 for entire evidence of the plaintiff at his own responsibility. On 24.07.2018, no evidence of the plaintiff was present and the case was adjourned to 21.08.2018 for entire evidence of the plaintiff at his own responsibility subject to last opportunity along with cost(s) of Rs.100/-. On 21.08.2018, one PW was present, but was not examined by the plaintiff as he did not bring the record. No other evidence of the plaintiff was present. The case was adjourned to 28.09.2018 for entire evidence of the plaintiff at his own responsibility subject to last opportunity. The witness was bound down for the date fixed. There was no reference of cost(s) which was imposed on earlier date i.e. whether the same was paid to the defendants or not?

[3]. On 28.09.2018 also there was no evidence of the plaintiff. Again a request was made for adjournment. The case was further adjourned to 05.11.2018 for entire evidence of the plaintiff at his own responsibility subject to last opportunity along with cost(s) of Rs.100/-. On 05.11.2018, no reference was made in respect of payment of cost(s) earlier imposed by the Court. Two witnesses namely Gurpreet Singh (PW 1) and Darshan Singh (PW 2) were examined-in-chief. The case was adjourned to 14.12.2018 for cross-examinations of PWs at the instance of learned counsel for the defendants and for remaining entire evidence of the plaintiff at his own responsibility. On the

adjourned date i.e. 14.12.2018, the witnesses were cross-examined. The case was further adjourned to 18.01.2019 with the same recital of own responsibility and last opportunity. No evidence of the plaintiff was present on 18.01.2019 and the case was further adjourned to 07.03.2019 with the same conditions of own responsibility and last opportunity.

[4]. Ultimately on 05.07.2019, the Court found that there was no evidence of the plaintiff available despite last opportunity on earlier occasions. The case was further adjourned to 11.07.2019 for entire evidence of the plaintiff at his own responsibility subject to one more last opportunity with cost(s) of Rs.1000/-.

[5]. Perusal of the aforesaid various interlocutory orders would show that the amount of cost(s) was imposed on three occasions. The material on record is silent about factum of payment of cost(s) by the plaintiff. On verification, learned counsel for the petitioner submitted that the cost(s) has not been paid by the plaintiff/petitioner, but he prayed for one opportunity subject to payment of additional cost(s).

[6]. I have considered the arguments raised by learned counsel for the petitioner and have also perused the material on record.

[7]. It appears from the record that the petitioner never

intended to pay the cost(s) already imposed on three occasions and also did not bring his evidence despite own responsibility and last opportunity granted by the trial Court on number of occasions.

[8]. 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.

[9]. 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.

[10]. Perusal of the record would show that petitioner is derelicted in terms of not depositing the costs on three

successive occasions. Finding no merit in the present revision petition, the same is accordingly dismissed.

26.08.2019

Prince

(RAJ MOHAN SINGH)

JUDGE

Whether reasoned/speaking

Yes/No

Whether reportable

Yes/No