

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5608 of 2019(O&M)
Date of Decision: 24.09.2019

Bharpur Singh

.....Petitioner

Versus

Balbir Kaur and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Mohit Sadana, Advocate
for the petitioner.

Mr. Puneet Sharma, Advocate
for respondent No.1.

RAJ MOHAN SINGH, J.

[1]. Petitioner has laid challenge to the order dated 26.07.2019 passed by Civil Judge (Senior Division), Sangrur, vide which evidence of the defendants was closed by order of the Court.

[2]. Perusal of the impugned order would show that last opportunity was granted to the petitioner/defendant on 16.07.2019 to conclude his evidence. Even on 04.07.2019, an amount of Rs.200/- was imposed as cost(s) and the same was not paid. Six opportunities were availed by the defendants, but

till the date of passing of impugned order, not even a single witness was examined. Sheer apathy of the defendants resulted in passing of impugned order dated 26.07.2019. The evidence of the plaintiff was closed after examination of PW 2 Roop Singh and PW 3 Girdhari Lal vide order dated 10.04.2019. Thereafter, defendants evidence started w.e.f. 29.04.2019.

[3]. The factum of payment of cost(s) was sought to be verified from the learned counsel for the petitioner. On 12.09.2019, learned counsel for the petitioner stated that the amount of cost(s) as imposed by the trial Court has already been paid to the learned counsel for the plaintiff. The said fact was not admitted by learned counsel for respondent No.1. The case was adjourned for today for verification of the aforesaid fact.

[4]. Today, learned counsel for the petitioner has admitted that in fact cost(s) was not paid prior to the passing of order dated 12.09.2019, rather the same was deposited vide receipt No.308774 on 21.09.2019. Sh. Gurinderpal Sharma, Advocate has issued the receipt of payment of cost(s) of Rs.200/- only on 23.09.2019.

[5]. In view of aforesaid factual position, it has been proved that the amount of cost(s) was not paid before passing of the impugned order dated 26.07.2019 and even before passing of

the order dated 12.09.2019 by this Court. A wrong statement of fact was made by learned counsel for the petitioner.

[6]. 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.

[7]. 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)**.

[8]. It is a settled principle of law that the party who has not

come to the Court with clean hands does not deserve any equitable relief from the Court. The case law cited by the learned counsel for the petitioner i.e. **Smt. Urmil Bhasin Vs. Ved Parkash Gauba, 2016(1) RCR (Civil) 422** does not answer the issue involved in the present case and is not relatable to the facts of the present case in any manner. No conflicting orders have come on record in the present case.

[9]. In view of above, this revision petition is found to be totally devoid of merits and is accordingly dismissed.

24.09.2019

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**(RAJ MOHAN SINGH)
JUDGE**

Whether reasoned/speaking Yes/No

Whether reportable Yes/No