

CR No.7269 of 2019(O&M)
Date of Decision: 11.12.2019

Versus

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Mr. Deepak Jindal, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[2]. Perusal of the record would show that on 02.12.2017, Mr. Nitin Rana, Advocate appeared on behalf of the defendants No.1 and 2/petitioners and filed power of attorney on behalf of defendant No.1 and memo of appearance on behalf of defendant No.2. The case was adjourned to 12.01.2018 for filing written statement. On 12.01.2018, power of attorney on behalf

of defendant No.2 was filed, but no written statement was filed and the case was adjourned to 12.03.2018. Thereafter, the case remained pending for the proceedings of the application under Order 7 Rule 11 read with Section 151 CPC filed by defendants No.1 and 2. The aforesaid application was ultimately dismissed on 03.07.2019 and the case was adjourned to 05.08.2019 for filing written statement. Even on 05.08.2019, written statement was not filed and the case was adjourned to 03.09.2019 for filing written statement subject to last opportunity. On 03.09.2019, again the written statement was not filed and On request of the learned counsel for the defendants, one more opportunity was granted for filing written statement subject to cost(s) of Rs.500/- to be paid to the plaintiff. On 19.09.2019, neither the written statement was filed, nor the cost(s) was paid by the defendants No.1 and 2/petitioners and the impugned order came to be passed.

[3]. 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.

[4]. 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 and **CR No.3926 of 2019** titled **Jeet Singh vs Gurmeet Singh and others** decided on 27.08.2019 has followed the dictum as laid down in **Shri Anand Parkash's case (supra)**.

[5]. In view of above, I find no reasons to differ with the impugned order. This revision petition is accordingly dismissed.

11.12.2019

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**(RAJ MOHAN SINGH)
JUDGE****Whether reasoned/speaking Yes/No****Whether reportable Yes/No**