

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

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Civil Revision No. 549 of 2021
Date of Decision : March 10, 2021

M/s Greaves Cotton Limited & others

.....Petitioners

VERSUS

Sadhu Singh Hamdard Trust

.....Respondent

2

Civil Revision No. 564 of 2021

M/s Greaves Cotton Limited & others

.....Petitioners

VERSUS

Sadhu Singh Hamdard Trust

.....Respondent

CORAM: HON'BLE MR. JASGURPREET SINGH PURI

Present : Mr. Anuj Dewan, Advocate
for the petitioners.

Through Video Conferencing

JASGURPREET SINGH PURI. J.

This order shall dispose of two Civil revisions No. 549 and 564 of 2021, which are identical in nature and the disputing parties are also the same.

For convenience, the facts are taken from Civil Revision

No.549 of 2021.

A Civil Suit was filed by respondent-Sadhu Singh Hamdard Trust vide Annexure P-3 for recovery of an amount of the generator set alongwith the interest as also for recovery of damages against the present petitioners. After the completion of plaintiff's evidence on 25.3.2019, the matter was fixed for defendants' evidence for 11.4.2019. Thereafter on 2.9.2019, one defence witness ("DW") had come present and tendered an affidavit and the matter was adjourned for cross-examination and for remaining DWs. The matter was adjourned from time to time for defendants' witnesses and on 28.1.2020 vide Annexure P-9, no defendants' witness was present and on request, the case was adjourned to 4.2.2020 for DWs subject to costs of Rs.200/-.

Vide impugned order dated 13.3.2020 (Annexure P-1), the learned Civil Judge (Jr. Divn), Jalandhar observed that the costs was not paid and no DW was present and that the file reveals that the defendants failed to conclude the evidence despite numerous opportunities and, therefore, the defendants' evidence was closed by order and it was directed that the matter be adjourned to 19.3.2019 for rebuttal evidence, if any, otherwise for arguments.

The learned counsel for the petitioners has submitted that the petitioners/defendants could not complete their evidence in view of the fact that the son of one of the witnesses was to undergo surgery and, therefore, the same could not be done. He has further submitted that although the costs were not paid, the defendants' evidence could have still been permitted for atleast one more opportunity by the learned Civil

Judge (Jr. Divn), Jalandhar and, therefore, according to learned counsel for the petitioners the impugned order was erroneous and liable to be set aside and another opportunity be granted to the petitioners/defendants to complete the evidence.

I have heard the learned counsel for the petitioners.

The law with regard to consequences of non-payment of costs is well settled. As per Section 35-B of the Code of Civil Procedure, 1908 if, on any date fixed for hearing of a suit or for taking any step therein, a party to the suit fails to take the step which he was required by or under this Code to take on that date, or obtains an adjournment for taking such step or for producing evidence or on any other ground, the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, if in the opinion of the Court, be reasonably sufficient to reimburse the other party in respect of the expenses incurred by him in attending the Court on that date, and payment of such costs, on the date next following the date of such order, shall be a condition precedent to the further prosecution of the suit by the plaintiff, where the plaintiff was ordered to pay such costs and the defence of the defendant, where the defendant was ordered to pay such costs.

In the present case vide Annexure P-9, learned Civil Judge (Jr. Divn), Jalandhar adjourned the case from 28.1.2020 to 4.2.2020 for defendants' witnesses subject to payment of Rs.200/- as costs and admittedly the costs were not paid and thereafter vide impugned order, it has been specifically recorded by the learned Civil Judge(Jr. Divn),

Jalandhar that the costs has not been paid and even no DW was present and, therefore, the defendants' evidence was closed by order. In view of Section 35-B CPC, in such like situation, the further defence of the defendants could not have been permitted and the further defence was liable to be struck off.

A Full Bench of this Court in **Anand Parkash Vs. Bharat Bhushan Rai and another**, *AIR 1981 PH 269* has observed that when the Court grants an adjournment by imposing costs and the party fails to pay such costs on the next date of hearing, it is mandatory for the Court to disallow the prosecution or the defence as the case may be. The Hon'ble Supreme Court in **Manohar Singh Vs. D.S.Sharma and another**, *(2010) 1 Supreme Court Cases 53* observed that in such a situation when the costs is not paid, the consequences mentioned in Section 35-B CPC would follow. However, the aforesaid provisions would not come in the way of the Court in exercising its discretion for extending the time of payment under Section 148 CPC. However, such an extension could be only in exceptional circumstances by subjecting the defaulting party to further terms and without it being in a routine manner.

In the present case, there is nothing on the record to show that the petitioners have ever apprised the learned Civil Judge (Jr. Divn), Jalandhar with regard to any difficulty faced by the petitioners in not depositing the costs and not producing the defendants' witnesses. There is nothing on record to show that any application under Section 148 CPC has been made by the petitioners. A reference has been made to Annexure P-8 which is a medical record of the son of one of the

witnesses. A perusal of the aforesaid medical record would show that the date of issue was 24.2.2020 and the surgery was conducted on 4.3.2020. However, the costs in the present case was imposed on 28.1.2020 and the next date was fixed for 4.2.2020 and the impugned order was passed on 13.3.2020. Therefore, on 4.2.2020 when the petitioners were supposed to pay the costs, the son of one of the witnesses was not in the hospital and even otherwise also the admission of son of one of the witnesses would not be a ground for non-payment of at least the costs. Apart from this, as per the record, nothing was brought to the notice of the learned Civil Judge (Jr. Divn), Jalandhar with regard to the aforesaid reason nor any application has been filed under Section 148 CPC for extension of time. Therefore, rather it was imperative upon the learned Civil Judge (Jr. Divn), Jalandhar to have closed the evidence of the defendants by declining to grant any further adjournment for the same purpose.

In view of the above, neither any perversity nor any legal infirmity can be found in the impugned order Annexure P-1 dated 13.3.2020.

Consequently, both the revision petitions are, hereby, dismissed.

However, no order as to costs.

(JASGURPREET SINGH PURI)
JUDGE

March 10, 2021
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Whether speaking/reasoned.	:	Yes/No
Whether Reportable.	:	Yes/No