

113 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-1353-2020
DECIDED ON: 05.10.2023

SAJJAN SINGH BHANGOO

.....PETITIONER

VERSUS

PIARA SINGH SINCE DECEASED AND OTHERS

.....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE VIKRAM AGGARWAL.

Present: Mr. D.K. Tuteja, Advocate and
Mr. Sapan Dhir, Advocate
for the petitioner.

Mr. Surinder Dhull, Advocate
for respondents No.1(a) to 1(c).

VIKRAM AGGARWAL, J (ORAL)

1. The present revision petition assails the order dated 16.01.2019 (Annexure P-4) passed by the Court of Civil Judge (Junior Division), Kharar vide which the application moved by the petitioner for permission to lead additional evidence was dismissed.

2. The facts, as emanating from the revision petition, are that respondent No.1-plaintiff filed a suit for declaration to the effect that he was the owner in possession of the suit properties in view of the Will dated 22.10.2006 having been executed by one Rupinder Singh. A further declaration was sought that judgment and decree dated 01.09.2008 passed by the Court of Civil Judge (Junior Division), Kharar was illegal and that Will dated 09.10.2006 being relied upon by the present petitioner-defendant No.1 was a forged and fabricated document.

3. The suit was opposed by the defendants. The petitioner-defendant No.1 filed a written statement (Annexure P-1) in which a stand was taken that no Will dated 22.10.2006 had been executed by Rupinder Singh as he was not in

India on the said date. Reliance was placed upon Will dated 09.10.2006 (mentioned as 06.10.2006 in the revision petition) stated to have been executed by Rupinder Singh in favour of the petitioner-defendant No.1.

4. A separate written statement was filed by the other defendants.

5. An application was purportedly moved by the present petitioner-defendant No.1 for leading additional evidence. The said application is also not on record of the present revision petition and the impugned order (Annexure P-4) shows that some record was sought to be produced to prove that the Will being relied upon by the respondent No.1-plaintiff was a forged and fabricated document and that actually Rupinder Singh was not present in India on 22.10.2006.

6. The application was resisted by respondent No.1-plaintiff in which it was averred that on two previous occasions, the present petitioner-defendant No.1 had approached this Court for examining attesting witnesses of the Will in his favour but despite imposition of costs of ₹10,000/- and ₹30,000/-respectively, no evidence was led.

7. The Court of the Civil Judge (Junior Division), Kharar dismissed the application after noticing all the aforementioned facts leading to the filing of the present revision petition.

8. I have heard learned counsel for the parties.

9. Learned counsel for the petitioner have strenuously urged that the trial Court erred in rejecting the application. It has been submitted that they would restrict their claim only to exhibit the passport of Rupinder Singh, the original of which is already on record. It has been submitted that the document is essential for the just decision of the case and that the petitioner, who is 82 years old, erroneously engaged a counsel who was 93 years old as a result of which his case was not properly pursued. It has also been submitted that the petitioner was

living abroad as a result of which he could not effectively pursue his case. It has been submitted that only one opportunity be granted to the petitioner to prove the passport of Rupinder Singh in accordance with law.

10. On the other hand, learned counsel representing respondents No. 1(a) to 1(c) has submitted that there is no illegality in the impugned order. It has been submitted that the petitioner has abused the process of law and under the circumstances, does not deserve to be granted any relief.

11. I have considered the submissions made by learned counsel for the parties.

12. During the course of arguments, the application moved before the trial Court for additional evidence and the reply submitted thereto has duly produced by learned counsel for the petitioner for perusal.

13. The suit was filed as far back as in the year 2005 i.e. on 03.02.2005 to be precise. Eighteen years have already gone by. The stand taken in the written statement filed by the present petitioner who is defendant No.1 in the suit is that on 22.10.2006 i.e the date on which Rupinder Singh is said to have executed a Will in favour of respondent No.-1/plaintiff, Rupinder Singh was not in the country. It was then for the petitioner to lead his evidence after issues had been framed. Initially, the evidence of the present petitioner was closed by order on 27.09.2016. A revision petition bearing **No.CR-7487-2016** was filed by the present petitioner which was allowed by this Court and permission was granted to the petitioner to summon attesting witness of the Will dated 09.10.2006 stated to have been executed in favour of the petitioner. Costs of ₹10,000/- were imposed. Admittedly, neither these costs were paid nor the witness was examined. Evidence of the petitioner was again closed. Another revision petition bearing **No.CR-5095-2018** was filed challenging the said order, which was again allowed by this Court subject to payment of costs of ₹30,000/- and one

opportunity was granted to produce the second attesting witness of the said Will dated 09.10.2006. Again, neither the costs were paid nor the witness was examined. In fact, counsel representing the present petitioner before the trial Court stated that he had specific instructions not to produce the attesting witness and that the petitioner was not willing to pay the costs of ₹30,000/- as directed by this Court. Undeterred, another application was moved for leading additional evidence which has been declined. In the considered opinion of this Court, the conduct of the petitioner disentitles him from any relief. In fact, on account of non-payment of costs imposed by this Court, the defence of the petitioner should have been struck off by the trial Court in accordance with the judgment passed by the Full Bench of this Court in '**Shri Anand Parkash Vs. Shri Bharat Bhushan Rai and another**', 1982 (1) RCR (Rent) 1 wherein it was held as under:-

“3. Anand Parkash petitioner filed a suit for the recovery of Rs. 400/- against Bharat Bhushan Rai and another, defendants. Before the evidence of the plaintiff could be recorded, an application was filed on behalf of the defendants to the effect that Smt. Dhanvantri Devi, defendant No. 2, had died and as her legal representatives were not brought on the record, the suit had abated. The plaintiff admitted the factum of the death of Smt. Dhanvantri Devi but disputed the date of death as given by the defendants, with the result that the parties were directed to led evidence about the date of the death of Smt. Dhanvantri Devi. After some evidence was led, the case was adjourned for recording the remaining evidence of the parties, to August 23, 1978, on which date an adjournment was prayed for on behalf of the defendants on the ground that their counsel had gone out of station. The prayer for adjournment was granted by the court subject to the payment of Rs. 35/- as costs and the case was adjourned to August 30, 1978, for the evidence of the parties. On august 30, 1978, the defendants stated that they did not

wish to pay the costs as they were not wanting to lead any evidence. On this an application was filed by the plaintiff under Order 18, Rule 17, read with Sections 151 and 35-B of the Code of Civil procedure (hereinafter referred to as the Code) to the effect that the defendants had refused to pay the costs of Rs. 35/- intentionally in order to delay the proceedings in the suit and that the defendants were debarred from prosecuting their defence any further. The other prayer made under Order 18, Rule 17 of the Code with which we are not concerned in this petition was that the plaintiff be allowed to be recalled as a witness. The application was opposed on behalf of the defendants. The learned subordinate Judge, on considering the entire matter, came to the conclusion that as the defendants had failed to pay the costs, they could not be allowed to further prosecute their application dated July 27, 1977, the plea of the plaintiff that the defence of the defendants be struck off, was negatived. It is earlier observed, against that order of the learned subordinate Judge that the present revision petition has been filed.

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In order to effectively deal with the matter, it would be appropriate to notice the provisions of Section 35-B of the Code, which read as under:--

"35-B. Costs for causing delay. If, on any date fixed for the hearing of suit or for taking any step therein, a party to the suit:-

- (a) fails to take the step which he was required by or under this code to take on that date, or
- (b) 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, 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-
(a) the suit by the plaintiff, where the plaintiff was ordered to pay such costs. (b) the defence by the defendant, where the defendant was ordered to pay such costs.

Explanation:-Where separate defences have been raised by the defendants or groups of defendants, payment of such costs shall be a condition precedent to the further prosecution of the defence by such defendants or groups of defendants as have been ordered by the Court to pay such costs.

(2) The costs ordered to be paid under sub-section (1), shall not, if paid, be included in the costs awarded in the decree passed in the suit; but, if such costs are not paid, a separate order shall be drawn up indicting the amount of such costs and the names and addresses of the persons by whom such costs are payable and the order so drawn up shall be executable against such persons."

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19. The admitted facts of the case are that an adjournment was sought for leading evidence on the application that was filed with a prayer that as Sm. Dhanvantri Devi, defendant No. 2, had died, the suit had abated. The application was contested. As the date of death of Smt. Dhanvantri Devi was disputed the parties were allowed to lead evidence. The defendants led some evidence ad for the remaining evidence. The case was adjourned to 23rd of August, 1978. On this date evidence was not led and an adjournment was sought on the ground that the counsel had gone out of station. The adjournment was granted on

payment of Rs. 35/- as costs and the case was adjourned to 30th of August, 1978, for the evidence of the parties on which date instead of paying the costs and leading evidence the counsel for the defendants gave statement that he did not want to pay the costs as he had not to lead any evidence. In view of this statement an application was filed under Section 35B of the Code praying that the defendants be debarred from prosecuting the defence any further. The learned trial Court allowed the application only to the extent that the prosecution of the application was debarred. The order of the trial Court has been challenged through this revision petition.

20. There can be no gain-saying that adjournment was sought for leading evidence on the application which was a step taken in the suit. The learned Sub Judge acted illegally and with material irregularity is disallowing the prosecution of the application only. The act of the defendants in refusing to pay the costs were contumacious. On the admitted facts straightaway a case for taking penal action against the defendants had been made out. The trial Court acted illegally and with, material irregularity in debarring the defendants from prosecuting the application only. The impugned order of the trial Court cannot be legally sustained.

21. Consequently, I allow this revision petition, set aside the order of the trial Court dated 6th September, 1978 and hold that as the costs were not paid by the defendants, they are debarred from prosecuting their defence any further. In the circumstances of the case, I make no order as to costs. The parties through their counsel are directed to appear before the trial Court on 20th July 1981.

22. I have the privilege of perusing the detailed and lucid judgments recorded by my learned brothers Jain and Sharma, JJ. With greatest deference to the view expressed by Sharma, J. I agree with Jain, J.

23. In accordance with the majority decision it is held that in

the event of the party failing to pay the costs on the date next following the date of the order imposing costs, it is mandatory on the Court to disallow the prosecution of the suit or the defence, as the case may be and that no other extraneous consideration would weigh with the Court in exercising its jurisdiction against the delinquent party. However, where the costs are not paid as a result of the circumstances beyond the control of the defaulting party then the Court will be well within its jurisdiction to exercise its power under section 148 of the Code in favour of the defaulting party if a strong case is made out for the exercise of such jurisdiction.

24. The revision petition is allowed and the order of the trial Court dated 6th September, 1978, is set aside and the defendants are debarred from prosecuting the defence any further. In the circumstances of the case the parties to bear their own costs.

25. The parties through their learned counsel have been directed to appear before the trial Court on 20th July, 1981.

Be that as it may, since it was not done, the proceedings continued and the present application was filed. The petitioner has not been able to even prima facie show that despite due diligence, this evidence could not have been produced when evidence of the petitioner was going on. The petitioner, in the considered opinion of this Court, has abused the process of law and does not deserve any further indulgence by this Court.

In view of the aforementioned facts and circumstances, I do not find any merit in the present revision petition and the same is accordingly dismissed.

(VIKRAM AGGARWAL)
JUDGE

05.10.2023
Prince Chawla

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No