



RSA-5876-2003 (O&M)

1

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

(102)

RSA-5876-2003 (O&M)

Date of Decision:- 05.05.2025

Jagdeep Singh and others

.....Appellants

Versus

Prem Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ALOK JAIN

Present: Mr. Anuj Gupta, Advocate for
Mr. Sanjiv Gupta, Advocate
for the appellants.

Mr. Marinal Sharma, Advocate
for respondent No. 9.

ALOK JAIN, J. (Oral)

1. The instant appeal has been filed for setting aside the judgment and decree dated 10.10.2003 passed by learned Additional Sessions Judge, Kurukshetra, whereby, the findings returned by learned trial Court vide judgment and decree dated 21.12.1996 on issues No. 1, 3 and 13 A was modified to the extent that the plaintiff and defendants No. 18 to 23 were held entitled to possession of land measuring 276 kanals and 08 marlas described in para 15 of the plaint, from defendants No. 1 to 8, on payment of Rs. 4,500/- to defendants No. 1 to 8 and thereby partly decreed the suit of the plaintiff.

2. The present appeal pertains to the year 2003 and vide order dated 24.04.2014, the following order was passed:



RSA-5876-2003 (O&M)

2

On the request of Mr. Sanjiv Gupta, Advocate, adjourned to 17.07.2014 subject to deposit of Rs. 5,000/- as costs with the State Legal Services Authority, Haryana.

2.1 However, despite passage of almost 11 years, the cost has not been deposited.

3. Learned counsel appearing for the appellants, at the outset, has submitted that the order dated 24.04.2014 was passed in his absence, however, perusal of the order sheet reveals that the counsel was duly present on the said date and the order was passed in his presence only.

4. On the last date of hearing also i.e. on 27.03.2025, counsel for the appellant Mr. Sanjiv Gupta, Advocate had put in appearance and he was again granted an opportunity to comply with the order dated 24.04.2014, however, the same has also not done till date.

5. It is a settled proposition of law that non-payment of cost shall entail dismissal of the case, which also finds mention in Section 35 B of CPC, the same is reproduced as under:

35B. Costs for causing delay.-- (1) If, on any date fixed for the hearing of a 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 defendant 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 indicating 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.

6. In view of the above, this Court is left with no other choice but to dismiss the appeal for non-compliance of the order dated 24.04.2014 (*supra*) for the unexplained delay of more than eleven long years. Accordingly, the present appeal stands dismissed.

7. After the order was passed in open Court, Mr. Sanjiv Gupta, Advocate has put in appearance and has tendered unconditional apology and submits that non-compliance occurred due to lapse in his office for which his client should not suffer. He prays that let this matter be heard on merits. He further submits that after the order was pronounced in the Court in presence of his associate, he has deposited the cost of Rs. 5,000/- and he be put to any additional cost which this Court may please to impose.



RSA-5876-2003 (O&M) 4

9. Since the order dismissing the appeal was pronounced in open Court, liberty is granted to the appellant to move an appropriate application for recalling the same by appending the receipt of deposit of cost.
10. Pending applications, if any, stands disposed of.

(ALOK JAIN)
JUDGE

05.05.2025
Parul

Whether speaking/reasoned:-	Yes/No
Whether Reportable:-	Yes/No