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

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Civil Revision No.6052 of 2024
Date of decision: February 10th, 2026

Raj Kumar

.....Petitioner

Versus

Ram Kishan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Naveen Batra and Mr. Rahul Garg, Advocates
for the petitioner.

Mr. Kanish Jindal, Advocate
for respondent No.1.

VIKAS BAHL, J. (ORAL)

1. This is a civil revision petition under Article 227 of the Constitution of India for setting aside impugned order dated 26.09.2024 passed by the Civil Judge (Junior Division), Hoshiarpur, vide which an application under Section 151 CPC to set aside the order dated 17.07.2024 vide which the defence of defendant No.1 was struck off, has been allowed.

ARGUMENTS ON BEHALF OF THE PETITIONER:

2. Learned counsel for the petitioner has submitted that in the present case, the petitioner had filed a suit for permanent injunction on 10.10.2023 and in the said case, the defence of respondent No.1/defendant No.1 was struck off on 17.07.2024 and respondent No.1 instead of filing a revision petition had moved an application under Section 151 CPC before the trial Court for setting aside the said order. It is submitted that the said application has been allowed by the trial Court vide order dated 26.09.2024. It is submitted that the order dated 26.09.2024 is illegal and against law



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inasmuch as an earlier order passed by the trial Court cannot be subsequently set aside/recalled by the same Court and it was open to the respondent to file a revision petition to challenge the order dated 17.07.2024 vide which the defence of respondent No.1/defendant No.1 was struck off. It is submitted that in view of the same, the present revision petition be allowed and the order dated 26.09.2024 be set aside.

ARGUMENTS ON BEHALF OF RESPONDENT NO.1:

3. Learned counsel for respondent No.1 has raised a preliminary objection in the present case. It is submitted that subsequent to the passing of the impugned order dated 26.09.2024, the written statement was filed on 05.10.2024 and cost imposed upon respondent No.1/defendant No.1 in the order dated 26.09.2024 was also paid and was accepted by counsel for the plaintiff who had submitted a statement that he has received the cost of ₹4,000/- from defendant No.1 in the Court and the case was adjourned to 13.11.2024 for filing of replication. It is further submitted that although the present revision petition was drafted on 14.10.2024 and notice of motion in the present case was issued by a coordinate Bench on 21.10.2024 but the said fact with respect to payment of cost has not been mentioned by the petitioner in the petition and thus apart from the petitioner being estopped from challenging the impugned order, the petitioner is also guilty of concealment of material fact.

4. It is further submitted that respondent No.1 had filed an application under Section 151 CPC for setting aside the order dated 17.07.2024 which in effect was an application for recalling the earlier order dated 17.07.2024 and the said application is maintainable and in support of



the said proposition, learned counsel for respondent No.1/defendant No.1 has relied upon the judgment of a coordinate Bench of this Court dated 24.05.1990 tilted as ***Sucha Singh and others Versus The State of Punjab through The Collector, Faridkot and others*** reported as ***1990(2) PLR 492***.

ANALYSIS AND FINDINGS:

5. This Court has heard learned counsel for the petitioner as well as learned counsel for the respondent and is of the opinion that the petitioner is estopped from challenging the order dated 26.09.2024 in view of the fact that the petitioner has accepted the cost, which was imposed by the said order, vide order dated 05.10.2024 and also that the order dated 26.09.2024 is in accordance with law and deserves to be upheld.

6. It is not in dispute that vide order dated 26.09.2024, the application filed by respondent No.1/defendant No.1 for setting aside the order dated 17.07.2024 (in effect seeking recalling of order dated 17.07.2027) was allowed by the trial Court in the following terms:

“4. I have heard the rival contentions of both the parties and gone through the case file carefully and meticulously.

*5. A bare perusal of the file reveals that defence of defendants was struck off vide order dated 17.7.2024 passed by the undersigned Court due to non filing of written statement by defendant No.1 within stipulated period. As per the law contained in ***Estate Officer Vs. Bachana Ram 2009(12) RCR.Civil 812***, the Court can allow placing on record of reply of the party subject to payment of costs. Furthermore, in ***Sucha Singh & Ors Vs. The State of Punjab through Collector, Faridkot & Ors. 1990(2) PLR 492***, it has been held at para No 2 of the order passed by the Hon'ble High Court that even if there is no provision for recalling the order of striking off of defence, under inherent powers of the*



*Court for doing substantial justice between parties under Section 151 of CPC, the defendant could be permitted to file the written statement on payment of costs. Furthermore, in the **Principal Secretary Vs. Jagdey Singh Rai 2016(3) LAR 673** the limiting time period under Order 8 Rule 1 CPC for filing written statement is directory in nature. Furthermore, it is settled law that no party should be condemned unheard. Hence, in light of the facts and circumstances of suit in hand, the instant application stands allowed and and single opportunity is given to defendant No.1 to file written statement, subject to costs of Rs.4,000 to be paid by him to the plaintiff. The interest of justice could be better served to certain extent if the plaintiff is atoned by way of payment of costs by defendant. The present application stands disposed of accordingly.*

Date of Order 26.9.2024

Amandeep Singh, PCS

CJJD/Gurdaspur

UID No.PB0587”

7. It is not in dispute that on 05.10.2024, the written statement was filed by respondent No.1/defendant No.1 and the cost of ₹4,000/- was also tendered on behalf of respondent No.1 and the counsel for the petitioner/plaintiff had suffered a statement that he has received the said cost of ₹4,000/- from defendant No.1. The order dated 05.10.2024 which has been handed over by the counsel for respondent No.1 during the course of the arguments and is not disputed, is reproduced hereinbelow:

*“Present: Sh. Suhas Rajan Dhir Advocate for the plaintiff.
Sh. Sanjeev Bhardwaj Advocate for the defendant No.1.
Defendant No.2 exparte.*

Written statement and reply to stay application on behalf of defendant No.1 filed today.



Copy supplied. Learned counsel for the plaintiff suffered a statement that he has received Rs.4,000/- as cost from defendant Nol today in the Court as per order dated 26.09.2024. Now to come up on 13.11.2024 for filing replication if any or for consideration on stay application.

Date of Order: 05.10.2024

*(Amandeep Singh)
CJJD, Hoshiarpur
UID NO. PB00587”*

8. The Division Bench of this Court in the case of ***Amar Singh vs. Perhlad and others*** reported as ***1989 AIR Punjab and Haryana 229*** while answering the reference had observed that in case a party accepts the cost, then, he accepts the order as correct and after having taken the benefit of the order, he cannot turn around to challenge the same and allowing the said party to challenge the order would amount to nullifying the effect of acceptance of costs. It was further observed that a party cannot be permitted to approbate and reprobate and that his own act would estop him from challenging the order. The Division Bench had made the said observation while examining a case wherein the cost had been accepted under protest and even in the said circumstance, the Division Bench had observed that even raising of protest would not make any difference and had accordingly held that the said party who had accepted the costs, was estopped from challenging the order therein. The relevant portion of the judgment of the Division Bench is reproduced hereinbelow:-

“This revision petition was admitted in D.B. in view of divergent views expressed in two cases by this Court on the point. The revision petition was filed challenging order dated March 6, 1987, passed by Subordinate Judge 1st Class, Mohindergarh, whereby an application filed under Order 6 Rule 17 of the Civil Procedure Code, for amendment of the



*plaint was allowed subject to payment of Rs. 500 as costs. The suit was filed by Perhlad for the grant of injunction restraining Gopal from alienating land measuring 112 Kanals 15 Marlas, which was joint Hindu family property as well as co-parcenary property, without consideration or legal necessity. **When notice of motion in the revision petition was issued on behalf of the respondent it was pointed out that the costs imposed by the impugned order were accepted, though under protest, on behalf of the petitioner and thus the petitioner after accepting the correctness of the impugned order could not file the revision petition.** J.V. Gupta, J., in *Baba Padam Gir Chela (disciple) of baba Chaudish Gir v. Murti (Deity) Shri Paras Nath Digamber Jain installed in Digamber Jain Mandir, Jind*, 1981 C.L.J. 411, held in similar circumstances where the appellant had accepted the costs under protest, that he could not be allowed to agitate against the order allowing amendment of the plaint. C.S. Tiwana, J, in *Randhir Singh v. Kamlesh*, (1980) 82 P.L.R. 337, held that when costs were accepted under protest it showed that the person concerned had not acquiesced in the order and thus he could challenge at the subsequent stage such an order. It was not required of the lawyer for such party to make specific statement that he was reserving his right to challenge the order of amendment of the plaint in appeal or revision. **Thus, the question for determination in this revision petition is as to whether the petitioner after he accepted costs as awarded by the Court while allowing application for amendment of the plaint under protest, could challenge such an order.***

2. *The question involved relates to estoppel, that is, when the party had accepted a benefit under the order he could not subsequently challenge the same. section 115 of the Indian Evidence Act deals with the question of estoppel and reads as under:-*

"115. Estoppel - When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

xxx xxx xxx

5. *In the present case, the petitioner having accepted costs awarded in the order while allowing amendment of the plaint further mentioned that he was accepting the amount under protest. This was a unilateral act on the part of the petitioner. Even if he had not accepted the costs, the same*



would have been deposited in the Court by the plaintiff. If the petitioner had withdrawn the costs from the Court unilaterally stating that the withdrawal would be under protest, he could not approbate and reprobate, that is accepting benefit of the order and at the same time objecting to the passing of the order. He had to accept the order as a whole. What he did was that he accepted the costs and thereby acquiesced in the correctness of the order passed. Although at the time of acceptance of the costs the petitioner stated that he was doing so under protest, that will not make any different as the opposite party had not consented to the statement of the petitioner in this respect. If in fact the petitioner wanted to challenge the order of amendment of the plaint, there was no compulsion for him to accept the costs. The costs would have remained deposited in the Court. The right of the petitioner to the costs imposed by the Court on the plaintiff while allowing amendment of the plaint was not based on any right of the petitioner in the suit. The costs were ordered by the Court to compensate the petitioner for the inconvenience caused during the pendency of the suit till the plaint was amended. Such an order regarding costs was made on term or condition for amendment of the plaint in view of Order 6 Rule 17, Civil Procedure Code. Such an order could not be accepted in part by either of the party while denouncing the other part. The plaintiff could not file amended plaint stating that he could pay costs at the time of final decision of the suit. Likewise the defendant could not say while accepting the costs that he would challenge the order in appeal or revision or that he would return the costs withdrawn if the order of amendment of plaint is set aside. The crux of the matter to be seen is as to what the petitioner did and not what he said. By acceptance of costs, he accepted the order as correct. He has taken benefit of the order. He cannot now turn around and say he will also challenge the order. By allowing him to challenge the order would amount to nullifying the effect of acceptance of costs. In such circumstances, he cannot approbate and reprobate. His own act would estop him. At the most it can be said that the petitioner had two options, one to accept the costs and to treat the order as correct, the other not to accept the costs, he exercised his choice in accepting the order as correct. His lodging the protest in such circumstances is meaningless.”

9. No contrary judgment on the said aspect has been cited by the counsel for the petitioner before this Court.



10. In view of the above, the petitioner is estopped from challenging the order dated 26.09.2024. Moreover, although the order dated 05.10.2024 was prior to the drafting of the present petition dated 14.10.2024, however, the said fact was not mentioned in the petition.

11. With respect to the objection raised by learned counsel for the petitioner on the aspect that once the order dated 17.07.2024 had been passed, the only remedy with respondent No.1/defendant No.1 was to file a revision petition and not an application under Section 151 CPC has also been answered against the petitioner by a coordinate Bench of this Court in the case of ***Sucha Singh and others (supra)***. In the said case, the defence of the defendant therein was struck off and the coordinate Bench had subsequently, on an application filed by the defendant therein for seeking permission to file written statement, allowed the said application subject to cost and the revision petition filed by the plaintiff therein was dismissed with the observations that the provisions in the Civil Procedure Code, 1908 are meant for doing substantial justice between the parties and the Court is not bound by the chains of procedures and even if a party has been proceeded against *ex parte*, the Court can set aside the said order on sufficient cause being shown. It was further observed that even if there is no provision for recalling the order of striking off defence, then also, the Court under its inherent powers under Section 151 of the Code of Civil Procedure in order to do substantial justice between the parties can allow the defendants to file written statement. It was also observed that the grant of cost in such like cases is the appropriate compensation for the inconvenience caused to the concerned party. The application filed under Section 151 CPC



for setting aside the order dated 17.07.2024 was in effect for recalling the order dated 17.07.2024 and the impugned order dated 26.09.2024 passed on the said application is in accordance with law. Moreover, every endeavour should be made by the Court to decide the case on merits rather than on technicalities, and thus, the fact that the defendant has been permitted to file written statement would assist the trial Court in finally adjudicating the matter.

12. The Hon'ble Supreme Court in the case of *Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil* reported as *(2010) 8 Supreme Court Cases 329*, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227 but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.



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13. Keeping in view the above, this Court is of the opinion that the impugned order does not call for any interference by this Court while exercising its powers under Article 227 of the Constitution of India and accordingly, the impugned order is upheld and the present revision petition being meritless, deserves to be dismissed and is accordingly dismissed.

February 10th, 2026
Puneet

(VIKAS BAHL)
JUDGE

Whether speaking/reasoned : Yes
Whether reportable : Yes