

Roor Singh Vs. Raghbir Singh and ors.

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Court : Punjab and Haryana

Decided On : Sep-24-2002

Reported in : (2003)133PLR216

Judge : M.M. Kumar, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 35B

Appeal No. : Civil Revision No. 100 of 2001

Appellant : Roor Singh

Respondent : Raghbir Singh and ors.

Advocate for Def. : Paramjit Kalia, Adv.

Advocate for Pet/Ap. : Manish Kamboj, Adv.

Disposition : Petition dismissed

Judgement :

M.M. Kumar, J.

1. This revision petition challenges the order dated 21.8.2000 passed by the Civil Judge (Junior Division), Amritsar dismissing the application of the plaintiff-petitioner filed under Section 35-B of the Code of Civil Procedure, 1908 (for brevity the Code) for striking of the defence of the defendant respondents on their failure

to have paid costs.

2. Brief facts of the case are that the plaintiff-petitioner has filed a suit No. 77 of 1990/1999 instituted on 9.3.1990/26.2.1999 for declaration to the effect that he is sole legal heir by inheritance of one Bhagat Singh son of Chet Singh to the extent of 1/4th share out of the suit land. When the suit was fixed for evidence of defendants on 20.12.1999 the defence evidence was and present and cost of Rs. 200/- was imposed for their failure to produce evidence and the case was adjourned to 17.1.2000 subject to payment of Rs.200/- as costs. On 17.1.2000, the following interlocutory order has been recorded by the Civil Judge.

'Examination in chief of one DW recorded. Cross examination is deferred on the request of counsel for the plaintiff. Now to come up on 28.1.2000 for cross examination of the present DW. DW present is bound down for the said date. Cost be paid on the same date.'

3. Even on the next date of hearing i.e. 27.1.2000 issue concerning failure to pay costs was not raised and was ignored. Thereafter, the case was adjourned to 10.2.2000. In the application filed by the plaintiff-petitioner it was stated that the issue concerning non payment of costs was specifically raised on 10.2.2000. Construing the averments made in the application to mean that on earlier date the issue concerning payment of costs has not been raised by the plaintiff-petitioner, the Civil Judge reached the conclusion that the principle of waiver would apply and once the claim of costs has been ignored on the date following the next date of hearing when the order imposing the costs was passed the rigour of Section 35-B of the Code would not apply. Relying upon Full Bench judgment of this Court in the case of Prem Sagar and Ors. v. Phool Chand and Ors., 1 (1983)85 P.L.R. 797, the Civil Judge rejected the application. He also held that the question of costs had lost significance once the matter was adjourned from 17.1.2000 to 27.1.2000, and on these two dates the issue of non payment of costs was not raised.

4. I have heard Shri Munish Kamboj, learned counsel for the plaintiff-petitioner and Shri Paramjit Kalia, learned counsel for the defendant-respondents. Mr. Kamboj has argued that the order dated 17.1.2000 passed by the Civil Judge cannot be construed to mean that non payment of costs was not raised. According to the

learned counsel once the order reflects non payment of cross it shall be deemed that cost was d man ed by the plaintiff-petitioner and still it was not paid. Therefore, the defence of defendant-respondent from that date onwards should have been struck of.

5. Shri Paramjit Kalia, learned counsel for the defendant-respondent has argued that the principle of waiver as enunciated by the Full Bench in Prem Sagar's case (supra) would be attracted because it is admitted by the plaintiff-petitioner in his application that the issue with regard to non-payment of costs was raised on 1.2.2000. The result of such averment would be that it would be deemed that on 17.1.2000 and 27.1.2000 the issue of non payment of costs was not raised. Once the opportunity of raising issue of non payment of costs is lost on the date following the date of hearing the rigour of Section 35B of the Code is taken away.

6. Having heard the learned counsel for the parties, I am of the considered opinion that the view taken by the Civil Judge does not suffer from any illegality warranting interference of this Court under Section 115 of the Code. The judgment in the case of Prem Sagar (supra) is absolutely clear in as much as it is observed that if the issue of non payment of costs is not raised the same cannot be resuscitated- Moreover, the subsequent view taken by this Court in Sher Singh and Ors. v. Mehma and Anr. (1993-1)103 P.L.R. 751 is that the objection of Section 35B of the Code is to secure efficacious, prosecution of the suit and not to penalise the party against whom the costs have been awarded. Therefore, the principles of waiver would apply to this case. Similar view has been taken by this Court in the case of Pitshpa v. Kundan Lal, (1994-1)106 P.L.R. 717.

7. For the reasons recorded above, this petition fails and the same is, dismissed. Asthe passing of the order remained stayed by virtue of an interim order dated 24-1.2001. deem it appropriate to direct the Civil Judge, Amritsar to dispose of the suit as expeditiously as possible and preferably within a period of three months of the receipt of certified copy of this order.