(1999) 08 P&H CK 0037

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 86 of 1983

Smt. Chhoti		APPELLANT
	Vs	
Sartu and Others		RESPONDENT

Date of Decision: Aug. 3, 1999

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 151, 35(B)

Citation: (2000) 1 CivCC 365 : (1999) 123 PLR 561 : (2000) 1 RCR(Civil) 124

Hon'ble Judges: R.L. Anand, J

Bench: Single Bench

Advocate: Raj Kumar Gupta, for the Appellant; Bhoop Singh, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

R.L. Anand, J.
This is a civil revision and has been directed against the order dated 2.8.1982 passed by Senior Sub Judge, Jind, who dismissed the suit of the petitioner Smt. Chhoti u/s 35-B of the CPC after relying upon a judgment reported as Anand Parkash v. Bharat Bhushan Rai (1983)85 P.L.R. 555 (F.B.).

2. The brief facts of the case can be described as under:-

Smt. Chhoti filed a suit for declaration against the defendants praying that the judgment and decree dated 18.10.1978 passed in civil suit No. 743 was the result of misrepresentation and fraud and was not binding over her rights in respect of the land as detailed in the plaint. The suit was contested. Issues were framed and the case was adjourned to 5.1.1982 for plaintiff''s evidence. On that day the plaintiff did not bring her evidence and consequently on her request the case was adjourned to 10.2.1982 for evidence of the plaintiff on payment of Rs. 20/- as costs. On 10.2.1982, costs of Rs. 20/- were not paid by the plaintiff although she examined two witnesses.

Thereafter on 12.2.1982, defendants filed the application u/s 35-B of the CPC for the dismissal of the suit as the plaintiff did not pay the costs of Rs. 20/- on 10.2.1982. The said application was contested by the plaintiff. Finally, vide impugned order dated 2.8.1982, the application filed by the defendants was allowed and the suit of the plaintiff Smt. Chhoti was dismissed.

3. Aggrieved by the said order, the present revision.

4. I have heard Mr. Bhoop Singh, Advocate on behalf of the respondents and Shri R.K. Gupta, Advocate for the petitioner. In my considered opinion the impugned order dated 2.8.1982 cannot be sustained in the eye of law. Section 35-B of the CPC lays down as follows:-

"35-B 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 producing evidence or on any other ground,

the Court may, for reason 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 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."

A reading of the above provisions would show that the suit could be dismissed only on 10.2.1982 and not subsequently. After 10.2.1982, the defendant/respondents participated in the proceedings and condoned the default, if any, made by the

plaintiff. His right only remained to receive the amount by way of execution.

Resultantly, the present petition is allowed, the impugned order is hereby set aside and directions are given to the trial Court to restore the suit to its original number and proceed according to law.