

# RAJASTHAN HIGH COURT

Sudhir Chandra Agarwal

Vs.

L.Rs. of Smt. Chhota Devi

S.B. Civil Revision No. 47 of 2005

(Dr. Vineet Kothari, J.)

03.12.2005

## ORDER

**Dr. Vineet Kothari, J.**

1. Heard learned counsel.

2. This revision petition is directed against the order dated 12.1.2005 of learned Civil Judge (Sr. Div.) and Chief Judicial Magistrate, Bikaner, whereby the Court rejected the application under Section 35-B read with Section 151 Civil Procedure Code of the defendant Sudhir Chandra, which was filed for rejection of the main suit No. 109/1983 because, the plaintiff had not paid the cost of Rs. 5,000/- which was imposed by the Court while allowing its application under Order 13 Rule 2 Civil Procedure Code for taking a particular document on record subject to payment of the cost. Since, the cost was not paid by the plaintiff on or before the next date of hearing, the present application was filed by the defendant praying therein the suit itself deserves to be dismissed.

3. Sri Sajjan Singh, learned counsel appearing for the petitioner has relied upon the language of Section 35-B, which provides for costs for causing delay and which says that if the cost imposed is not paid on the date next following the date of such order, it shall be condition precedent to the further prosecution of the suit by the plaintiff, where plaintiff was ordered to pay such costs. Sub-section (2) of Section 35-B further provides that 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

drawn up shall be executable against such persons.

4. In the present case, since the cost imposed by the trial Court of Rs. 5,000/- not paid by the plaintiff, which was a condition for allowing his application under Order 13 Rule 2 Civil Procedure Code, the only consequence which could flow from that non-compliance was that the application under Order 13 Rule 2 Civil Procedure Code could be treated as rejected and the document in question, which was sought to be taken on record, would not be taken. With effect from 1.7.2002 after amendment of Civil Procedure Code Order 7 Rule 14(3) Civil Procedure Code provided that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint but is not produced or entered accordingly, shall not without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.

5. The learned counsel has relied upon the judgment of Punjab & Haryana High Court in *Anand Prakash v. Bharat Bhushan*,<sup>1</sup> wherein the provisions of Section 35-B of Civil Procedure Code have been held to be mandatory. He has also cited the judgment of this Court in *Gulab Singh v. Dhanraj*,<sup>2</sup> wherein this Court held that if cost imposed by the Court is not paid, the Court's jurisdiction is not ousted and the Court can grant further time or a reasonable opportunity for the purpose of making payment of the amount of costs and if the other party can be compensated by payment of further costs and no serious or substantial prejudice is likely to be caused to the other party, the Court should not take the extreme step of shutting the prosecution of the case filed by the plaintiff or the defense of the defendant, as the case may be.

6. With respects, *it appears to be judicious approach not to shut down the case for non-payment of costs which in the present case appears to be very high and the plaintiff may not have been in a position to pay such cost. Therefore, non-payment of cost in the present case could at best result in the rejection of the application under Order 13 Rule 2 Civil Procedure Code akin to Order 7 Rule 14(3) Civil Procedure Code after amendment. Therefore, the learned trial court cannot be said to have committed any error in holding that the suit was not required to be dismissed and, therefore, the application under Section 35-B read with Section 151 Civil Procedure Code filed on 3.12.2004 by the defendant was rejected.*

7. I find no error of jurisdiction or illegality in the impugned order. In the facts and

circumstances of the case, as observed by this Court in case cited before me in *Gulab Singh v. Dhanraj* (supra), a token cost of Rs. 500/- is imposed on the plaintiffs for allowing them to prosecute their suit further.

8. The revision petition is disposed of accordingly. The record of the trial Court be sent back.

Petition disposed of.

Cases Referred.

1. 1982(1) R.C.R.(Rent) 1 : ( AIR 1981 Punjab and Haryana 269)
2. (1983 RLW 173)