
(1998) 04 P&H CK 0016
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 1093 of 1998

Baldev Singh

APPELLANT

Vs

Rattan Singh and Others

RESPONDENT

Date of Decision : 17-04-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : (1998) 120 PLR 67

Hon'ble Judges : Sat Pal, J

Bench : Single Bench

Advocate : B.R. Mahajan, for the Appellant; Har Pawan Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Sat Pal, J.—This petition has been directed against the order dated 7.2.1998 passed by the Civil judge, Junior Division, Amritsar. Vide this order, the learned trial Court accepted the application filed by the plaintiff/respondent seeking the permission of the Court to deposit the amount of costs, which were awarded in the earlier suit. Notice of this petition was issued to the respondents.

2. In this case, the respondent-plaintiff had earlier filed a suit for joint possession of the suit property. During the pendency of the earlier suit, the respondent filed an application seeking permission of the Court to withdraw the suit with liberty to file fresh suit on the same cause of action. The said application was allowed by the learned trial Court vide order dated 15.5.1990, which reads as under :-

"Separate statement as submitted recorded. The plaintiff is granted permission to withdraw the suit and is granted permission to file fresh suit on the same cause of action subject to payment of Rs. 50/- as costs. File be consigned to the record room."

3. Thereafter, the respondent plaintiff filed a fresh suit on the same cause of action on 5th June, 1995. In the second suit, the amount of costs was not

deposited by the respondent plaintiff nor any objection was taken by the petitioner-defendant about the payment of the costs of Rs. 50/-. It was only in the year 1995 when the evidence of the parties has been closed that the petitioner-defendant raised objection that the filing of the fresh suit was subject to the payment of costs of Rs. 50/- and since the amount of costs was not paid by the respondent-plaintiffs the suit of the plaintiff was liable to be dismissed. After the objection was raised, the respondent-plaintiff filed an application u/s 151 C.P.C. before the learned trial Court seeking permission of the court to deposit the amount of costs of Rs. 50/- which was awarded in the earlier suit. By the impugned order dated 7th February, 1998, the application of the respondent plaintiff to make the payment of the costs at a belated stage was allowed by the learned trial Court. The present petition has been filed by the petitioner-defendant against the aforesaid order dated 7th February, 1998.

4. I have heard the learned counsel for the parties and have perused the impugned order. Mr. Harpawan Kumar, learned counsel appearing on behalf of the respondent, has drawn my attention to a judgment of the Supreme Court in *Konkan Trading Company Vs. Suresh Govind Kamat Tarkar and Others*, wherein it was held by the S.C. that the costs in a case like the present one can be paid by the plaintiff even during the pendency of the second suit after a direction had been given by the learned trial Court. Since in the present case, the learned trial Court has allowed the respondent-plaintiff to make the payment of the costs at this stage. I am of the opinion that the impugned order passed by the learned trial Court does not call for any interference by this Court in view of the law laid down by the apex Court in the case of *Konkan Trading Company* (supra).

5. For the reasons recorded herein above the petition is dismissed with no order as to costs.