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

CR-2008-2023 (O&M)

Date of Decision : 16.01.2025

M/s Milap Foundry & Engineering Works & Anr ... Petitioner(s)

Versus

M/s Futuristic Solutions Pvt. Ltd. ... Respondent(s)

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Brijeshwar Singh Bhalla, Advocate for the petitioners.

Ms. Jasmine, Advocate for

Mr. Prateek Sodhi, Advocate for the respondent.

ALKA SARIN, J. (Oral)

1. The present revision petition has been filed under Article 227 of the Constitution of India challenging the impugned order dated 04.03.2023 (Annexure P-8) whereby the application filed by the plaintiff-respondent for amendment of the plaint was allowed.

2. Learned counsel for the plaintiff-respondent, at the outset, has pointed out that vide the impugned order dated 04.03.2023 the application for amendment of the plaint under Order 6 Rule 17 CPC was allowed subject to payment of ₹10,000/- as costs to be paid to the opposite party and the defendant-petitioners had received the costs without any protest and on the basis of the statement of the counsel recorded separately on 03.04.2023, it was recorded in the *zimni* order dated 03.04.2023 passed by the Trial Court that the costs had been accepted vide a separate statement and the case was adjourned for filing of an amended plaint. The learned counsel has further contended that in view of the law laid down by a Division Bench of this

Court in the case of **Amar Singh vs. Perhlad & Ors.** [1989 (2) PLR 513], the present revision petition itself would not be maintainable.

3. Learned counsel for the defendant-petitioners states that the facts of the present case are different and, hence, the judgment in the case of **Amar Singh** (supra) would not be applicable.

4. I have heard the learned counsel for the parties.

5. In the present case, while allowing the amendment of the plaint, costs of ₹10,000/- were imposed and subsequently the learned counsel for the defendant-petitioners made a separate statement accepting the said costs. On the basis of the statement, it was recorded in the order dated 03.04.2023 that the costs had been accepted and the case was adjourned for filing of an amended plaint. The Division Bench of this Court in the case of **Amar Singh** (supra) has held as under :

“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 difference 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 in meaningless. Reference here may be made to the decision of Madras High Court in R. Samudra Vijyam Chettiar v. Srinivasa Alwar, AIR 1956 Madras 301 laying down the following principle :-

"Where a man is entitled to one of two inconsistent rights and he has with full knowledge done an unequivocal act indicating his choice of the one he cannot afterwards pursue the other which after the first choice is by reason of the inconsistency no longer open to him. Such cases do not require detriment to the other party as foundation for their application."

Similar view was taken by the Madras High Court in K. Shanmugham Pillai v. S. Shaimigham Pillai, AIR 1968 Madras 207. The view expressed by the Madras High Court in Ramaswami Chettiar v. Chidambaram Chettiar's case appears to be correct. The said High Court reiterated the view subsequently in H.G. Krishna Reddy v. M.M. Thimmiah's case. The view expressed in Randhir Singh v. Kamlesh's case, thus, cannot be accepted."

6. In view of the law laid down by the Division Bench, once the costs had been accepted, the present revision petition itself would not be maintainable. In view thereof, the present revision petition is, accordingly, dismissed. Pending applications, if any, also stand disposed off.

16.01.2025
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE: Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO