

CR-6166-2025 (O&M) 1

2025:PHHC:133031



IN THE HIGH COURT OF PUNJAB & HARYANA AT
CHANDIGARH

CR-6166-2025 (O&M)

Date of decision : 24.09.2025

Bhupinder Singh

... Petitioner

Versus

Amrik Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE VIKAS BAHL

Present: Mr. Vinay Puri, Advocate for the petitioner.

VIKAS BAHL, J.(ORAL)

CM-18988-CII-2025

1. This is an application under Section 151 CPC for revival of the revision petition which was disposed of.

2. For the reasons stated in the application which is supported by an affidavit, the application is allowed and the order dated 08.09.2025 is recalled and the main petition is ordered to be restored to its original number.

CR-6166-2025

1. This is a Civil Revision Petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.08.2025 passed by the Additional Civil Judge (Sr.Div.), Jalandhar, vide which the application moved by the defendant-respondent for setting aside the order dated 22.05.2024 (Annexure P-3) passed by the Additional Civil Judge (Sr.Div.), Jalandhar vide which the defendant-respondent was proceeded



against ex-parte, has been allowed.

2. The present petitioner had filed a suit for recovery of damages and for compensation. In the said suit it was shown that the respondent-defendant was resident of 91, Drewstead Road London SW 16 1 AD UK. The defendant was proceeded against ex-parte vide order dated 22.05.2024 and had thereafter moved an application for setting aside the ex-parte proceedings on the plea that the defendant was living in U.K. and his counsel had been appearing on each and every date and had also filed written statement in the case but on 22.05.2024 the counsel for the applicant-defendant could not appear before the Court and thus, he was proceeded against ex-parte. It was further averred that the defendant had been hotly contesting the case and he wanted to participate in the case to defend the case and in case he was not allowed to participate in the same, then, great prejudice would be caused to him. Although, the application filed by the respondent-defendant has not been annexed with the present revision petition but the said facts are apparent from the reading of the impugned order dated 01.08.2025, which observations have not been shown to be perverse.

3. The trial Court vide order dated 01.08.2025 had observed that the case was at the initial stage and allowing the defendant to appear in the case would help in effective and proper disposal of the matter in dispute and as such the application filed by the defendant was allowed and the ex-parte proceedings against the defendant were set aside, subject to payment of



costs of Rs.8000/- to be paid by the defendant to the plaintiff. The case was thereafter adjourned to 08.08.2025 for PWs as well as for payment of the cost of Rs.8000/-. The relevant portion of the order dated 01.08.2025 is reproduced hereinbelow:-

“.....The present case is at the initial stage. No prejudice will be caused to the parties if the application in hand is allowed.

In the considered opinion of this court, allowing the defendant to appear in the present case at this stage of the case will help in effective and proper disposal of the matter in hand. As such present application is hereby allowed and the ex parte proceedings against defendant is set aside subject to payment of cost of Rs.8000/- to be paid by defendant to the plaintiff. Needless to mention that payment of cost shall be condition precedent for further adjudication of suit. Findings given above will have no effect on the merits of the case. Adjourned to 08.08.2025 for PWs. It is made clear to the counsel for defendant to paid the costs of Rs.8000/- to the opposite party on or before the next date of hearing from the passing of the said order, failing which ex parte order will stand.

Date of Order: 01.08.2025”

4. On 08.09.2025 when the matter came up for hearing before this Court, since zimni order dated 08.08.2025 and subsequent zimni orders had not been annexed, this Court was pleased to pass the following order:-

“1. A perusal of the impugned order would show that the application of the defendant for setting aside the ex parte



proceedings was allowed subject to the payment of costs of Rs.8,000/- to be paid by the defendant and the case was adjourned to 08.08.2025. Zimni order dated 08.08.2025 and subsequent zimni orders have not been annexed along with the present revision petition.

*2. In view of the above, the present revision petition is disposed of with liberty to the petitioner to revive the same after annexing the said order dated 08.08.2025 and the subsequent zimni orders.
08.09.2025”*

5. Now the subsequent zimni orders have been annexed, thus, the petition has been revived. The zimni order dated 08.08.2025 is reproduced hereinbelow:-

“Present: Proxy Counsel Pankaj Sharma, for plaintiff.

Sh.Parshant Kumar Sharma Advocate counsel for applicant/defendant.

***Cost paid.** No pw present today. Case stands adjourned to 19.08.2025 for evidence of pws.*

*Date of Order: 08.08.2025 (Gurbhinder Singh Johal)
Additional Civil Judge (Senior Division)
Phillaur UID No. PB0373”*

A perusal of the above zimni order would show that the cost had been paid by the defendant to the plaintiff and the cost had been accepted. The payment and acceptance of the said amount has not been disputed before this Court. The said zimni order would further show that no PW was present on 08.08.2025 and similarly on 29.08.2025 and 10.09.2025, no PW was present. The orders dated 29.08.2025 and 10.09.2025 are



reproduced hereinbelow:-

“Present: Ms. Manpreet Kaur Thalla, Advocate counsel for plaintiff.

Sh. Parshant Kumar Sharma, Advocate counsel for defendant.

No pw present today. On request, case is adjourned to 05.09.2025 for evidence of the plaintiff.

*Date of Order: 29.08.2025 (Gurbhinder Singh Johal)
Additional Civil Judge (Senior Division)
Phillaur UID No. PB0373*

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Present: Ms. Manpreet Kaur Thalla, Advocate counsel for plaintiff.

Sh. Parshant Kumar Sharma, Advocate counsel for defendant.

No pw present today. On request, case is adjourned to 12.09.2025 for evidence of the plaintiff.

*Date of Order: 10.09.2025 (Gurbhinder Singh Johal)
Additional Civil Judge (Senior Division)
Phillaur UID No. PB0373”*

6. The Division Bench of this Court in the case of **Amar Singh vs. Perhlad and others** reported as **1989 AIR Punjab and Haryana 229** while answering the reference had observed that in case a party accepts the cost, then, he accepts the order as correct and after having taken the benefit of the order, he cannot turn around to challenge the same and allowing the said party to challenge the order would amount to nullifying the effect of acceptance of costs. It was further observed that a party cannot be permitted to approbate and reprobate and that his own act would estop him from



challenging the order. The Division Bench had made the said observation while examining a case wherein the cost had been accepted under protest and even in the said circumstance, the Division Bench had observed that even raising of protest would not make any difference and had accordingly held that the said party who had accepted the costs, was estopped from challenging the order therein. The relevant portion of the judgment of the Division Bench is reproduced hereinbelow:-

“This revision petition was admitted in D.B. in view of divergent views expressed in two cases by this Court on the point. The revision petition was filed challenging order dated March 6, 1987, passed by Subordinate Judge 1st Class, Mohindergarh, whereby an application filed under Order 6 Rule 17 of the Civil Procedure Code, for amendment of the plaint was allowed subject to payment of Rs. 500 as costs. The suit was filed by Perhlad for the grant of injunction restraining Gopal from alienating land measuring 112 Kanals 15 Marlas, which was joint Hindu family property as well as co-parcenary property, without consideration or legal necessity. When notice of motion in the revision petition was issued on behalf of the respondent it was pointed out that the costs imposed by the impugned order were accepted, though under protest, on behalf of the petitioner and thus the petitioner after accepting the correctness of the impugned order could not file the revision petition. J.V. Gupta, J., in Baba Padam Gir Chela (disciple) of baba Chaudish Gir v. Murti (Deity) Shri Paras Nath Digamber Jain installed in Digamber Jain Mandir, Jind, 1981 C.L.J. 411, held in similar circumstances where the appellant had accepted the costs under protest, that he could



*not be allowed to agitate against the order allowing amendment of the plaint. C.S. Tiwana, J, in Randhir Singh v. Kamlesh, (1980) 82 P.L.R. 337, held that when costs were accepted under protest it showed that the person concerned had not acquiesced in the order and thus he could challenge at the subsequent stage such an order. It was not required of the lawyer for such party to make specific statement that he was reserving his right to challenge the order of amendment of the plaint in appeal or revision. **Thus, the question for determination in this revision petition is as to whether the petitioner after he accepted costs as awarded by the Court while allowing application for amendment of the plaint under protest, could challenge such an order.***

2. The question involved relates to estoppel, that is, when the party had accepted a benefit under the order he could not subsequently challenge the same. section 115 of the Indian Evidence Act deals with the question of estoppel and reads as under:-

"115. Estoppel - When one person has, by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing.

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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.”

7. No contrary judgment on the said aspect has been cited by the counsel for the petitioner before this Court.

8. In view of the same, the petitioner is stopped from challenging the impugned order. Additionally it would be relevant to mention that the case is at the initial stage and thus, the order of the trial Court permitting the defendant to participate in the proceedings after he had already filed the written statement and had paid costs, could not be said to be an order which would call for any interference by this Court under Article 227 of the Constitution of India.

9. The Hon'ble Supreme Court in the case of "*Shalini Shyam Shetty and another Vs. Rajendra Shankar Patil*", reported as (2010) 8 *Supreme Court Cases* 329, had observed that the High Courts cannot, at the drop of a hat, in exercise of its power of superintendence under Article 227 of the Constitution, interfere with the orders of tribunals or courts inferior to it. Nor can it, in exercise of this power, act as a court of appeal over the



orders of court or tribunal subordinate to it. It was also observed in the said judgment that a statutory amendment with respect to Section 115 of the Civil Procedure Code does not and cannot cut down the ambit of High Court's power under Article 227, but at the same time, it must be remembered that such statutory amendment does not correspondingly expand the High Court's jurisdiction of superintendence under Article 227. The power of interference under this Article is to be kept to the minimum to ensure that the wheel of justice does not come to a halt and the fountain of justice remains pure and unpolluted in order to maintain public confidence in the functioning of the tribunals and courts subordinate to the High Court. It was also observed that the power under Article 227 may be unfettered but its exercise is subject to high degree of judicial discipline.

10. Keeping in view the above said facts and circumstances, the impugned order deserves to be upheld and is accordingly upheld and the present revision petition filed by the petitioner being meritless, deserves to be dismissed and is accordingly dismissed.

(VIKAS BAHL)
JUDGE

September 24, 2025.

Davinder Kumar

Whether speaking / reasoned
Whether reportable

Yes/No
Yes/No