

to affect the State revenues. The work of tax assessment/ collection will be done by the same staff which has already been employed for the purpose."

(13) As a result of the foregoing discussion, we find no merit in the contentions raised by the learned counsel for the petitioners and hold that the impugned amendments are not assailable on the ground that Haryana Legislature was not competent to make them or that retrospective operation could not be given to the amendments.

(14) It was next contended by the learned counsel that the paddy purchased by the petitioners being an agricultural produce was exempt from the payment of the purchase tax by virtue of entry 25 of Schedule B to the Act. The contention is baseless and obviously misconceived. The said entry reads thus—

"25. Agricultural or horticultural produce sold by a person or a member of his family grown by himself or grown on any land in which he has an interest whether as owner or usufructuary mortgagee, tenant or otherwise. When sold in the State.

(15) There can be no dispute that paddy is an agricultural produce. But on its plain language, the entry is intended to grant exemption in respect of sales tax to the person who grows paddy and sells it. The petitioners do not grow paddy. They purchase it. The purchases made by them are sought to be taxed to purchase tax. The petitioners do not evidently qualify for the exemption.

(16) In the result, all the petitions are dismissed, but without any order as to costs.

S. S. Sandhwalia, C.J.—*I agree.*

H.S.B.

Before R. N. Mittal, J.

MANAK CHAND,—*Petitioner.*

versus

SURESH CHAND JAIN,—*Respondent.*

Civil Revision No. 324 of 1979.

March 28, 1979.

Code of Civil Procedure (V of 1908)—Section 35B—Costs awarded against a party not paid on the next date of hearing—Factum of non-payment not brought to the notice of the Court and case adjourned to a subsequent date—Such party—Whether debarred from prosecuting the case on the subsequent date.

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Held, that from a reading of section 35-B of the Code of Civil Procedure 1908, it is evident that if costs are awarded to a party on the ground that the other party failed to take the step which he was required under the Code to take on some date, or obtained an adjournment for taking such step (or for producing evidence or on any other ground, the payment of costs on the next following date of the order shall be a condition precedent for further prosecution of the case by the party against whom the costs were awarded. If he fails to do so, he would not be allowed to prosecute the case. The words "on the date next following the date of such order" are important. The section deprives that party to prosecute the case if he fails to pay the costs on the next date following the date of the order. This is an extreme penalty and shall not be imposed unless the case squarely falls within the four corners of the section. It is also well established that a penal section is to be construed strictly. The provisions of the section being penal in nature, shall apply where on the date when the costs are to be paid, the fact is brought to the notice of the court before the party liable to pay the costs takes step in the case. If on that date it is not brought to the notice of the Court and the party takes step or leads evidence he cannot be deprived of his right to further prosecute the case on the subsequent date. The reason is that if the fact had been brought to his notice at the relevant time, he might have paid the costs. (Para 3).

Petition under section 15(5) of the Haryana Urban (Control of Rent & Eviction) Act 1973 for revision of the order of the Court of Shri Suresh Chand Jain, Rent Controller, Hissar, dated the 29th January, 1979 rejecting the application for striking of the right to prosecute the application for fixation of fair rent by Suresh Chand Jain, applicant.

B. S. Tyagi, Advocate for Adarsh Goyal, Advocate, for the Petitioner.

M. C. Jain, Advocate with V. K. Jain, Advocate, for the Respondent.

JUDGMENT

R. N. Mittal, J.—(1) This revision petition has been filed by the respondent against the order of the Rent Controller, Hissar, dated January 29, 1979, whereby he rejected the application for striking off the right to prosecute the application for fixation of fair rent by Suresh Chand Jain, applicant.

(2) Briefly the facts are that Suresh Chand Jain filed an application for fixation of fair rent, under section 4 of the Haryana Urban (Control of Rent and Eviction) Act, against Manak Chand respondent.

The Rent Controller fixed various dates for the evidence of the petitioner but he could not lead full evidence. Ultimately October 3, 1978 was fixed for the statement of the petitioner. On that date he made a request for summoning the additional witnesses. The learned Rent Controller allowed the request subject to payment of Rs. 15 as costs and adjourned the case to November 4, 1978. On that date too the petitioner did not produce the additional witnesses for he himself appeared in the witness box. He also did not pay the costs awarded on October 3, 1978. On his request the case was again adjourned to November 29, 1978, subject to payment of Rs 10 as costs. On the adjourned date he again did not pay the costs which were awarded on October 3, 1978 and on November 4, 1978. On December 19, 1978, the respondent filed an application that the petitioner had forfeited his right of prosecution of the application for fair rent under section 35B of the Code of Civil Procedure as he had failed to pay the costs. The Rent Controller dismissed the application. The respondent has come up in revision petition against that order of the Rent Controller.

(3) The question that arises for determination in the present case is that if costs are awarded against the petitioner under section 35B of the Code of Civil Procedure, which are not paid on the next date of hearing and matter is not brought to the notice of the Court on that date, can he be debarred from prosecuting the case on a subsequent date. In order to determine this question, it will be proper to refer to the provisions of section 35B of the Code which reads as follows :—

“35B costs of causing delay—

- (1) If, on any date fixed for the hearing of a suit or for taking any steps 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 for producing evidence or on any other ground,

the Court may, for reasons to be recorded, make an order requiring such party to pay to the other party such costs as would, in the

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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.

From a reading of the above section, it is evident that if costs are awarded to the respondent on the ground that the petitioner failed to take the step which he was required under the Code to take on some date, or obtained an adjournment for taking such step, or for producing evidence or on any other ground, the payment of costs on the next following date of the order shall be a condition precedent for further prosecution of the case by the petitioner. It is further evident that if he fails to do so, he would not be allowed to prosecute the case. The words *“on the date next following the date of such order”* are important. (Emphasis supplied by underlining the words). The section deprives the petitioner to prosecute the case if he fails to pay the costs, on the date next following the date of the order. This is an extreme penalty and shall not be imposed unless the case squarely falls within the four corners of the

section. It is also well established that a penal section is to be construed strictly. The provisions of the section, being penal in nature, shall apply where on the date when the costs are to be paid, the fact is brought to the notice of the Court before the party liable to pay the costs takes step in the case. If on that date it is not brought to the notice of the Court and the party takes steps or leads evidence, he cannot be deprived of his right to further prosecute the case on the subsequent date. The reason for arriving at this conclusion is that if the fact had been brought to his notice at the relevant time, he might have paid the costs. It is also worth highlighting that if costs are not paid to a party, he has got the right to recover them under sub-section (2). After taking into consideration all the circumstances, I am of the opinion that in the present case, the Court rightly rejected the application of Manak Chand, revision petitioner. There is, therefore, no scope for interference with the order of the Rent Controller.

(4) For the reasons recorded above, the revision petition fails and the same is dismissed with no order as to costs. The parties through their counsel are directed to appear in the trial Court on April 23, 1979.

S.C.K.

Before G. C. Mital, J.

GARIB CHAND,—Plaintiff-Appellant.

versus

MUNICIPAL COMMITTEE, BUDHLADA,—Defendant-Respondent.

Civil Regular Second Appeal No. 10 of 1978.

March 30, 1978.

Code of Civil Procedure (V of 1908)—Section 99 and Order 41 Rule 1—No resolution by a Municipal Committee authorising its executive officer to file an appeal and engage an advocate—Executive Officer authorising an advocate to file an appeal on behalf of the Committee—Such appeal—Whether competent—Objection regarding competency of the appeal not taken before the first appellate Court—Whether can be allowed to be raised in second appeal—Section 99—Whether a defence against such an objection.

Held, that the Municipal Committee had to pass the resolution giving authority to file appeal on its behalf against the judgment and