

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

CR No.1943 of 2015 (O&M)

Date of decision: 21.4.2015

Avtar Singh and another

..... Petitioners

Versus

Baljit Kaur and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Deepak Arora, Advocate for the petitioners.

RAJESH BINDAL, J

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside order dated 17.12.2014 passed by the learned court below, whereby defence of the petitioners-defendants was struck off by order for non-filing the written statement as well as non-payment of costs.

The proceedings in the present case arise out of a suit for declaration and permanent injunction filed by respondent No.1/plaintiff against the respondents/defendants.

For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents, as the same would unnecessarily delay not only the disposal of the present petition but also the suit as well.

Learned counsel for the petitioners submitted that the petitioners being father and daughter are NRI settled in England. Respondent No.1 is another daughter of petitioner No.1. They appointed Balbir Singh as their special attorney in the present case. Learned counsel for the petitioners further submitted that the suit was filed by respondent No.1/plaintiff on 26.5.2014. After service of the respondents, on 1.10.2014, the case was adjourned to 1.11.2014 for filing the written statement by the petitioners-defendants. On 1.11.2014, written statement could not be filed and the case was adjourned to 1.12.2014. Again on 1.12.2014, written statement could not be filed by the petitioners-defendants and the case was adjourned to 17.12.2014 for filing the written statement subject to payment of costs of ₹

1,000/-. On 17.12.2014, defence of the petitioners-defendants was struck off for non-compliance of the order. On 17.12.2014, presence of the counsel for the petitioners/defendants has been wrongly marked as counsel for the petitioners in the trial court had noted wrong date as 14.1.2015 instead of 17.12.2014. Affidavit of clerk of the counsel in support thereof has been placed on record as Annexure P-6. He further submitted that in case one opportunity is granted, the petitioners will file written statement and deposit the cost imposed on the next date of hearing, i.e. 23.4.2015, when the case is fixed for filing written statement on behalf of defendant No.3.

The facts submitted by the learned counsel for the petitioners are borne out from the record. Non-filing of the written statement on the date fixed is on account of reasons beyond their control. The case is still at the stage of filing the written statement by other defendant.

Accordingly, while setting aside the impugned order dated 17.12.2014 striking off the defence of the petitioners/defendants, the learned court below is directed to grant one opportunity to the petitioners for filing their written statement on the date already fixed. The impugned order passed by the learned court below is modified accordingly. If aggrieved, the respondent No.1/plaintiff shall have right to file application for recalling the aforesaid order. The same shall be subject to deposit of cost of ₹ 5,000/- with the District Legal Services Authority, Jalandhar.

The revision petition is disposed of in the manner indicated above.

(RAJESH BINDAL)
JUDGE

21.4.2015

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