

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.293 of 2014
Date of Decision: 13.02.2015

Smt. Pinki and another

..... Petitioners

Versus

Dinesh Kumar and others

..... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Rakesh Nehra, Advocate,
for the petitioners.

Mr. Gurcharan Dass, Advocate,
for the respondents.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The petitioners are defendants in the suit for declaration with consequential relief of permanent injunction sought against them with respect to suit corpus. The opposite party has filed a suit for nullifying a sale deed executed in 1983 and a testamentary will made in the year 2004 regarding the suit property in favour of the defendants-petitioners. On receipt of summons in the suit, the petitioners appeared on the first date fixed for appearance of the defendants. The case was adjourned for filing the written statement. Till then, status quo was ordered with regard to possession of the suit corpus. However, written statements were not filed on or before October 11, 2013 and November 06, 2013, the successive dates in the case. Last opportunity to do so was granted by the trial judge on November 06, 2013 when the case was adjourned to December 04, 2013.

On December 04, 2013 the petitioners defence was struck off by court order for want of written statement. The trial judge proceeded to frame issues on the same day.

Learned counsel for the petitioners submits that the trial court has ignored the provisions of Order 8 Rule 1 CPC which provides the time of 90 days from the date of service of summons for filing the written statement. It is not clear from record as to when summons were received by the defendants but the fact remains that they appeared on the first date i.e. September 06, 2013. If we take September 06, 2013 as the point of reference then there was still time till December 04, 2013 for presenting the written statement. In striking off defence an extremely strict construction of the rules of procedure may not serve the ends of justice especially where a widow and her daughter are the defendants with a sale deed and a testamentary will, protecting their interest, subject evidently, to the result of the suit.

In the circumstances, I do not think this case deserves to be viewed strictly from the point of view of procedural law and some allowance has become necessary to be granted so that the ends of justice are not defeated. Striking off defence may entail serious civil consequences adverse to the interest of the defendants and prejudice in the defence of the suit may be occasioned where the plaintiffs might be placed in a situation to succeed by default. It is best that the suit is decided on merits after a full-fledged trial based on full pleadings.

I do not think that my interim order dated January 20, 2014 was a good response to the case since I had failed to appreciate then the terrible

consequences of the onerous pre-condition I then thought fit to impose in the shape of heavy costs. Consequently, on due reflection, I had posted the matter for re-hearing to reconsider the matter. I would thus recall my interim order dated January 20, 2014.

Resultantly, this revision petition is allowed and the impugned order dated December 04, 2013 is set aside. The issues be recast in the light of the written statement to be filed, which will be taken on record. Time to do so is extended by one month from the date the certified copy of the order is made available on the trial court record. The parties are directed to appear before the trial Court on March 12, 2015 for further proceedings. No costs.

(RAJIV NARAIN RAINA)
JUDGE

13.02.2015
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