

IN THE HIGH COURT OF PUNJAB & HARYANA AT CHANDIGARH

CM No.3788-CII of 2015 in/and
CR No.397 of 2015
Date of decision:25.02.2015

Gurmohinder Pal Singh Saggu

....Petitioner

Versus

Bimla Budwal

.....Respondent

CORAM: HON'BLE MR.JUSTICE G.S.SANDHAWALIA

Present: Mr.Pankaj Maini, Advocate, for the petitioner.

G.S.Sandhawalia J.(Oral)

CM No.3788-CII of 2015

Application for preponing the case has been filed. In view of the averments made in the application, which are duly supported by an affidavit, the same is allowed and hearing of the case is preponed from 02.03.2015 to today.

CR No.397 of 2015

Challenge in the present revision petition is to the order dated 01.10.2012 (Annexure P5), whereby the plaintiff-petitioner did not file any reply to the counter-claim dated 22.05.2012 (Annexure P4). Accordingly, the Addl. Civil Judge (Sr.Divn.) SAS Nagar, Mohali, has struck off the defence on the ground that a period of 90 days has elapsed and no plausible explanation has been given as to why reply has not been filed.

The said order was passed almost 2 ½ years back and the plaintiff-petitioner has allowed the proceedings to go on in the counter claim. In such circumstances, though the present revision petition has been filed under Article 227 of the Constitution of India, but this Court cannot lose sight of the fact that in normal circumstances, in a revision preferred under Section 115 of CPC, limitation would be only of 90 days. Indulgence can be there to some extent but

not where the petitioner himself has opted not to invoke the jurisdiction of this Court for a long time. It is settled principle that limitation takes away the right of a party and the right accrues to the other side. In such circumstances, at this stage, now, to permit the petitioner to agitate against the impugned order would not be tenable when the trial is coming to an end.

It is also to be noticed that the suit of the plaintiff is for permanent injunction restraining the defendant from carrying out further construction adjoining the walls of House No.173, Phase II, SAS Nagar, Mohali and not to encroach upon the common wall, which was filed on 18.05.2012. The counter-claim was immediately filed thereafter wherein prayer was made that the plaintiff should be directed to allow the defendant to plaster the common wall of property No.173 and 174 from the side of the plaintiff as he was using force in stopping the defendant from doing so. It is case of common knowledge that if the wall is not plastered, water will seep through the bricks during rains and cause immense damage. For the last almost 2 ½ years the counter claim has been pending for the necessary relief and thus, the property of the defendant-respondent has been subjected to major damage on account of non-filing of the reply by the plaintiff-petitioner. To permit filing of the reply to the counter claim would amount to setting the clock back and would cause serious and irreparable loss and damage to the defendant. The rights of the petitioner, if any, are jeopardised on his own account and there is no scope for indulgence by this Court in the matter.

Accordingly, finding no merit in the present revision petition, the same is hereby dismissed.

20.02.2015
sailesh

(G.S.SANDHAWALIA)
JUDGE