

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

CR No.4897 of 2015 (O&M)

Date of decision: 5.8.2015

Balbir

..... Petitioner

Versus

Raghubir and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BINDAL

Present: Mr. Ravinder Phogat, Advocate for the petitioner.

RAJESH BINDAL, J

Prayer in the present petition filed under Article 227 of the Constitution of India is for setting aside order dated 2.7.2015 passed by the learned court below, whereby defence of petitioner/defendant No.1 was struck off by order for non-filing of written statement.

The proceedings in the present case arise out of a suit for specific performance of agreement to sell filed by respondent No.1/plaintiff against petitioner/defendant No.1 and respondents No.2 to 13.

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 petitioner submitted that the suit was filed by respondent No.1/plaintiff on 2.4.2013. After service, counsel on behalf of defendant No.1 appeared on 19.7.2014 for the first time. On 29.9.2014, he filed vakalatnama on behalf of defendant No.1. The case was adjourned for 2-3 times for filing the written statement by petitioner/defendant No.1 as well as for service of other defendants. However, he could not file written statement. On 2.7.2015, defence of petitioner/defendant No.1 was struck off for non-filing of the written statement. Learned counsel for the petitioner submitted that petitioner/defendant No.1 is an old person aged about 70 years and suffering from several diseases. He remained hospitalised due to his illness. Copies of some of the medical record has been placed on record.

Because of this reason, he could not file written statement within time. He

further submitted that the suit is still at the stage of service of defendants No.11 and 12. In case one opportunity is granted, the petitioner will file written statement on the next date of hearing, i.e. 27.8.2015, when the case is fixed for service of the unserved defendants.

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

Accordingly, while setting aside the impugned order dated 2.7.2015 striking off the defence of petitioner/defendant No.1, the learned court below is directed to grant opportunity to the petitioner for filing his written statement on or before 27.8.2015 with copy in advance to the counsel for the plaintiff. The impugned order passed by the learned court below is modified accordingly. The same shall be subject to payment of cost of ₹ 5,000/- to the plaintiff by way of demand draft on the next date of hearing. If aggrieved, the respondent No.1/plaintiff shall have right to file application for recalling the aforesaid order.

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

(RAJESH BINDAL)
JUDGE

5.8.2015

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