

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.6109 of 2014
DATE OF DECISION: February 13,2015

Nazar Singh

....Petitioner

versus

Paramajit Singh and others

.....Respondents

CORAM:- HON'BLE MR.JUSTICE RAKESH KUMAR JAIN

Present: Mr.M.K.Singla, Advocate for the petitioner.
Mr.H.R.Bhardwaj, Advocate for the
respondents.

RAKESH KUMAR JAIN, J.

This revision petition is directed against the order dated 12.9.2011, striking off the defence of the petitioner and order dated 14.7.2014, dismissing his application for seeking permission to file the written statement.

The plaintiff-respondent filed a suit for permanent injunction on 8.6.2011 in which notice was issued for 13.6.2011. The defendants-petitioners appeared on 13.6.2011 and the case was adjourned to 16.7.2011 for filing written statement. In the meantime, the petitioner and other defendants were got arrested in a case registered vide FIR No.44 dated 21.6.2011, at Police Station Sadar

Sunam and, therefore, the written statement could not be

prepared and filed. However, the application filed by the plaintiff for temporary injunction was contested by the defendants-petitioners through their Advocate and also made a statement that they would not disconnect and shift or transfer the electric tube-well motor connection No.C-654 installed in the joint khewat No.178/142, khatauni No.232, khasra No.711/3-19 till the decision of the suit.

The defence of the petitioner was struck off on 12.9.2011 on the ground that it has not been filed within the statutory period of 90 days. The defendant-petitioner was released from jail on 5.12.2013 and immediately thereafter on 17.12.2013, moved an application along with written statement, seeking permission to file the same.

Learned counsel for the petitioner has submitted that the plaintiff-respondent has not examined even a single witness so far, though the suit was filed as far as back on 7.6.2011. It is also submitted that written statement could not be filed because they were behind the bars and had no opportunity to sit with their Advocate to prepare it. It is also submitted that the trial Court has taken a harsh view in striking off the defence just on the expiry of statutory period of 90 days.

Learned counsel for the respondent while opposing the petition, has argued that there is no error in the impugned order because the entire fault is of the defendants-petitioners in not filing the written statement in time, If they could appear through an Advocate on 22.6.2011, they could have filed the written statement as well. It is also submitted that the written statement was not filed despite the fact that the case was adjourned twice before the order was passed on 12.9.2011.

After hearing learned counsel for the parties and examining the record, I am of the considered opinion that this petition deserves to be allowed because it is a case where the trial Court has struck off the defence just after 90 days from the date of filing of the suit, specially when they were behind the bars in a criminal case registered against them by the respondent. The conduct of the petitioner has to be seen from the fact that soon after releasing from the jail on 5.12.2013, they filed the written statement along with an application, seeking permission of the Court on 17.12.2013 without wasting much time, but the application was dismissed on 12.9.2011.

Thus, Keeping in view the totality of the facts and circumstances, the present petition is allowed. The orders dated 12.9.2011 and 14.7.2014 are hereby set aside but for the inconvenience caused to the plaintiff because of the present litigation, he is compensated with costs of Rs.5,000/-.

February 13, 2015
KD

(RAKESH KUMAR JAIN)
JUDGE