

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

-.-

CR 1622 of 2016
Date of decision: 02.03.2016

State of Haryana and others

..... Petitioners

Versus

Ashok Kumar

.....Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Lekh Raj Sharma, Advocate
for the petitioners

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1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J. (Oral)

The present petition has been directed against the orders dated 03.08.2015 (Annexure P3) and dated 05.11.2015 (Annexure P6) passed by the Civil Judge (Junior Division) Sirsa, striking off defence of petitioners No. 1 and 2 and dismissal of an application seeking permission to deposit Rs.1,600.00 imposed as costs for non-filing of the written statement.

Counsel for the petitioners would contend that due to some misunderstanding that written statement was to be filed only by petitioners No. 3 and 4, written statement on behalf of petitioners No. 1 and 2 was not filed though a number of opportunities were given by the trial Court for the purpose. It is further submitted that petitioners No. 3 and 4 have already filed their written statement but defence of petitioners No. 1 and 2 has been

struck off for want of filing of the written statement and payment of costs. It is further submitted that the respondent/plaintiff can well be compensated with costs for delay attributable to the petitioners in submitting their defence when otherwise, they are ready to deposit the costs imposed by the trial court and the costs, if any, assessed by this Court. The petitioners would file their written statement in case they are provided with one effective opportunity. The trial has not progressed any further as no witness has been examined by the plaintiff/respondent.

Keeping in view the nature of the order to be passed, the petition is being disposed of without notice to the respondent but he would be at liberty to file an appropriate application in case he has any grievance to express.

Perusal of the order dated 05.11.2015 would reveal that the petitioners put in appearance on 09.12.2014 and defence was struck off on 03.08.2015 and during interregnum, the case was adjourned on 6-7 occasions. It is an admitted position of the case that the petitioners did not deposit costs to the tune of Rs.600.00 imposed on one occasion and additional costs of Rs.1,000.00 imposed on 21.07.2015.

In view of the submissions made by counsel for the petitioners coupled with the fact that a serious prejudice is likely to be caused to the petitioners in case they are not allowed to file their written statement when otherwise cost is panacea for delay attributable to the petitioners, the petition is disposed of by providing one opportunity to petitioners No. 1 and 2 to file their written statement on the date to be fixed by the trial Court, subject to payment of costs imposed by the trial Court and additional amount of Rs.5,000.00 as costs to be deposited with the Legal Services

Authority, Sirsa.

Before parting with this order, it is pertinent to mention that in the order dated 03.08.2015, the designation of the presiding officer has been mentioned as 'JMIC/Sirsa'. The Judicial Magistrate is not competent to deal with civil cases. The officer concerned is advised to be careful in future so that correct designation is mentioned in view of the nature of power exercised.

Disposed of.

(Rekha Mittal)
Judge

02.03.2016
mohan bimbura