

In the High Court of Punjab and Haryana at Chandigarh

PARAMJIT KAUR SAINI
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Civil Revision No.2353 of 2016
Date of Decision: 1.4.2016

Gagandeep Kaur and another

---Petitioners

versus

Baljit Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Inderjeet Singh, Advocate
for the petitioners

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.

The present petition has been directed against orders dated 22.8.2014 (Annexure P-2) striking off defence of the petitioners and dated 27.1.2016 (Annexure P-4) dismissing application of the petitioners to set aside order dated 22.8.2014.

Counsel for the petitioners would submit that application for recalling order dated 22.8.2014 vide order dated 27.1.2016 has been dismissed by the trial court primarily on the ground that it would amount to review of its earlier order despite the fact that the respondent/plaintiff raised no objection in regard to setting aside the order dated 22.8.2014 whereby defence of the petitioners was struck off for want of filing of

written statement within a period of 90 days. Another submission made by counsel is that the provisions of Order 8 Rule 1 of the Code of Civil Procedure are not mandatory but directory in nature. In addition, it has been argued that a serious prejudice is likely to be caused to the petitioners in case they are not permitted to file the written statement as in absence of defence plea, they would not be entitled to cross examine witnesses of the respondents/plaintiff in regard to any factual controversy nor would be entitled to produce any defence to counter case of the respondents/plaintiff.

I have heard counsel for the petitioners, perused the records and find that the petition is meritorious and deserves to be accepted.

Perusal of order dated 27.1.2016 substantiates plea of the petitioners that counsel for the respondent/plaintiff raised no objection in case the order passed by the trial court striking off defence of the petitioners is set aside but the trial court expressed its helplessness to set aside the order with the observations that it may amount to review of the earlier order. In view of submissions made by counsel for the petitioners coupled with the factum that the respondent/plaintiff raised no objection if the petitioners are permitted to file the written statement after setting aside the order striking off their defence, the petition is allowed, the impugned order is set aside and the petitioners are allowed one effective opportunity to file the written statement.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by the respondent/plaintiff.

However, if the respondent has any grievance to express, she shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

1.4.2016
PARAMJIT