

Civil Revision No. 4314 of 2016

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 4314 of 2016

Date of Decision: 25.7.2016

Surinder Pal and another

--- Petitioner

versus

Harbilas and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.Ramesh Sharma, 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 order dated 5.4.2016 whereby defence of the petitioners (defendant Nos. 6 and 9) has

been struck off for want of filing of written statement.

Counsel for the petitioners has submitted that though the petitioners availed of four effective opportunities for filing of written statement but the trial court on 21.1.2016, passed an order of last opportunity, the day some of the respondents were proceeded against ex parte and the present petitioners were appearing in person. It is further submitted that the petitioners could not engage a counsel as they were in the process of arranging necessary funds and the day, Sh.M.K.Ralh, Advocate appeared on their behalf and filed power of attorney, on the very same day, their defence was struck off. It is argued that a serious prejudice is likely to be caused to the petitioners, in case, they are not permitted to file the written statement and defend the proceedings initiated by the plaintiffs/respondent Nos. 1 and 2 for possession by way of partition of the suit house.

Another submission made by counsel is that no evidence has been adduced by the respondents/plaintiffs after framing of issues and the case is now fixed for 3.8.2016 for evidence. In addition, it is submitted that the petitioners are ready to pay reasonable costs for delay attributable to them.

I have heard counsel for the petitioner, perused the paper book

and various zimni orders passed by the trial court.

The zimni orders recorded by the trial court would vouch correctness of contention that the petitioners remained attending to the proceedings in person till 5.4.2016, the date on which power of attorney was filed by a counsel on their behalf and on the very same day, their defence was ordered to be struck off. The provisions of Order 8 Rule 1 of the Code of Civil Procedure are directory and not mandatory in nature as has been held by Hon'ble the Supreme Court in **Salem Advocate Bar Association, Tamil Nadu vs. Union of India 2005(3)RCR(Civil) 530**.

The petitioners would suffer serious consequence in case they are not permitted to file the written statement and defend the proceedings. There is nothing on record suggestive of the fact that failure of the petitioners to file the written statement was mala fide much less with an ulterior motive to achieve. In the given facts and circumstances, it is expedient in the interest of justice that the petitioners are provided with one opportunity to file the written statement subject to payment of costs of Rs. 10,000/- to be deposited with the trial court before 3.8.2016 and payable to the respondents/plaintiffs, as per rules. The petitioners shall ensure that the written statement is filed before the trial court on or before 3.8.2016, the

date already fixed in the proceedings failing which, the petition shall be deemed to be dismissed.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondents/plaintiffs in order to avoid inconvenience and incurring expenditure by them. However, if the respondents/plaintiffs have any grievance to express, they shall be at liberty to file an appropriate application before this Court.

Disposed of.

(Rekha Mittal)
Judge

25.7.2016

PARAMJIT