

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

CR No.4904 of 2016(O&M)

Date of decision:3.8.2016

Avtar Singh and others

....Petitioners

VERSUS

Smt. Paramjit Kaur and another

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. K.S. Rekhi, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

The present petition has been directed against order dated 25.05.2016 (Annexure P-2) whereby defence of the petitioners (defendants No.1 to 4) has been struck off for want of filing of written statement.

Counsel for the petitioners has submitted 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. It is further argued that Sh. Kulwant Singh, Advocate, filed memo of appearance on behalf of the petitioners before the trial Court on 23.11.2015 and thereafter, the case was adjourned on number of occasions for service of defendant No.5- Sh. Ranjit Singh and suit against the said defendant was dismissed by the Court vide order dated 25.05.2016 due to failure of the respondent/plaintiff to furnish his correct address. It is argued that in none of the orders passed by the trial Court since 23.11.2015 till 25.05.2016, the petitioner was ever called upon to file the written statement. According to learned counsel, the trial Court without appreciating the facts in right perspective and the serious consequence

likely to ensue by closing right of the petitioners to file the written statement has passed the impugned order abruptly by holding that statutory period for filing the written statement has already elapsed and as such defence of the petitioners stands struck off. In addition, it is submitted that the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (for short 'CPC') are not mandatory but directory in nature.

I have heard counsel for the petitioners, perused the paper-book particularly the various zimini orders recorded by the trial Court and the order impugned.

The submissions made by counsel for the petitioners are borne out from the zimini orders recorded by the trial Court. The impugned order is conspicuously silent as to why the trial Court did not think it proper to extend the time for filing of written statement even if the same was not filed within the statutory period more particularly in the circumstances that the petitioners were never directed to file the written statement. On the contrary, in case the petitioners are not permitted to file the written statement, the same is likely to cause serious prejudice to them and the respondent/plaintiff can well be compensated with costs for delay, if any, attributable to the petitioners.

In the given circumstances, the petitioners are provided with one effective opportunity for filing of the written statement within a period of 15 days from today. In case, the petitioners fail to file the written statement within the stipulated period, the petition shall be deemed to be dismissed.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent in order to save her

from unnecessary expenses and inconvenience. However, the respondent would be at liberty to file an appropriate application in case she has any grievance to express.

AUGUST 3, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no