

IN THE HIGH COURT OF PUNJAB & HARYAN AT CHANDIGARH

CR No.5323 of 2015

Date of Decision: 30.3.2016

Gurinderjit Singh

.....Petitioner

Versus

Tajinder Kaur

....Respondent

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. Ram Bilas Gupta, Advocate for the petitioner.

Mr. K.K. Kahlon, Advocate for the respondent.

* * * *

Darshan Singh, J.

The present revision petition has been preferred against the order dated 12.5.2015 passed by the learned Additional Civil Judge (Sr. Division), Tarn Taran vide which the defence of the petitioner-defendant has been struck off.

Learned counsel for the petitioner contended that the valuable rights of the petitioner are involved in the suit. The learned trial Court has struck off the defence of the petitioner even before the completion of 90 days. He pleaded that the petitioner will submit the written statement if one opportunity is granted.

Learned counsel for the respondent contended that three opportunities were granted to the petitioner to file the written statement. Last opportunity was also granted subject to costs. The petitioner has neither paid the costs nor filed the written statement. So, there is no illegality in the impugned order.

I have duly considered the aforesaid contentions.

The present suit has been filed for possession by respondent-Tajinder Kaur on the basis of her right of inheritance qua the estate of Darshan Singh, the father of the parties. So, certainly the valuable rights of the petitioner are involved in the present suit. The petitioner was earlier proceeded against ex parte in the suit. The ex parte proceedings against him were set aside on 27.2.2015 and the case was adjourned to 25.3.2015, then to 20.4.2015 and finally to 12.5.2015 when the impugned order has been passed. Though three opportunities have been granted by the learned trial Court including the last opportunity to file the written statement but it is the settled principle of law that the lis between the parties should be adjudicated upon on merits and not on technicalities. If one more opportunity is granted to the petitioner to file the written statement that will not cause any prejudice to the rights of the respondent-plaintiff. Rather it will advance the interest of justice to properly adjudicate upon the rights of the notice. The Hon'ble Supreme Court in case **Kailash versus Nanhku and others 2005 (2) RCR (Civil) 379** has held that the provisions of Order 8 Rule 1 are not mandatory and are only directory in nature.

Thus, keeping in view my aforesaid discussion, the present revision petition is hereby allowed. The impugned order dated 12.5.2015 is hereby set aside. The petitioner is granted one opportunity to file the written statement subject to Rs.6,000/- as costs

payable to the respondent-plaintiff. The written statement be filed on the next date of hearing fixed before the trial Court i.e. 9.5.2016 along with costs.

March 30, 2016
ps

(DARSHAN SINGH)
JUDGE