

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

CR No.5334 of 2016(O&M)

Date of decision:22.8.2016

Rajeshwar Kapoor and anotherPetitioners

VERSUS

Pawan Kumar Singla and othersRespondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajinder Goyal, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

CM No.16512-CII of 2016

Prayer in this application filed under Order 22 Rule 4 read with Section 151 of the Code of Civil Procedure, 1908 is for bringing on record the legal representatives of Ravinder Kumar (since deceased)– respondent No.4, statedly passed away on 06.03.2016.

Heard.

In view of averments made in the application supported by an affidavit of Nirmal Singh, the application is allowed and the persons mentioned in para 2 of the application are allowed to be brought on record as legal representatives of deceased-Ravinder Kumar (respondent No.4) for the purpose of present *lis*, subject to all just exceptions.

Disposed of accordingly.

CR No.5334 of 2016

The present petition has been directed against orders dated 27.04.2016 (Annexure P-1) and dated 20.07.2016 (Annexure P-4) whereby defence of the petitioners is ordered to be struck off and an application

filed by the petitioners for recalling the order dated 27.04.2016 has been dismissed, respectively.

Counsel for the petitioners has submitted that Rajeshwar Kapoor – petitioner/defendant No.3 was pursuing the proceedings before the trial Court through his attorney Sh. Ravinder Kumar son of Sh. Amar Singh who passed away on 06.03.2016. The petitioners engaged Sh. Anand Gupta, Advocate, before the trial Court but Sh. Anand Gupta, Advocate, met with an accident resulting in serious injuries and could not appear before the Court since January, 2016 onwards till 27.04.2016 and Sh. R.R. Sharma, Advocate had been appearing on behalf of Sh. Anand Gupta, Advocate as a proxy counsel. It is further submitted that in reply to application for recalling the order dated 27.04.2016 particularly para 3(a), the factum of injuries to Sh. Anand Gupta, Advocate, has not been denied by counsel representing the respondents/plaintiffs.

It is vehemently argued that as failure to file the written statement on behalf of the petitioners was due to sustaining of injuries by their counsel (Sh. Anand Gupta, Advocate) and a serious prejudice is likely to be caused to the petitioners in case they are not permitted to file written statement and defend the proceedings, the petitioners may be allowed one opportunity to file the written statement and they are ready to compensate the respondent/plaintiff for delay, if any, attributable to the petitioners. In addition, it is argued that after passing of the impugned order, there is no progress in the proceedings and the case is still pending for hearing the parties on an application for grant of interim injunction. Written statement on behalf of the petitioners was appended along with application for recalling order dated 27.04.2016 and therefore, in case plea of the

petitioners is accepted, the said written statement can be taken into consideration by the Court below for disposal of the suit.

I have heard counsel for the petitioners, perused the paper-book particularly the various Annexures appended with the petition and the zimini orders reproduced in the petition itself.

The submissions made by counsel for the petitioners get sufficiently substantiated from the facts on record. In the interest of substantial justice coupled with delay in filing written statement by the petitioners is not intentional but due to reasons beyond their control as their counsel Sh. Anand Gupta, Advocate, met with an accident and sustained injuries rendering him unable to attend the proceedings, the petition is allowed, written statement already filed by the petitioners along with application for recalling order dated 27.04.2016 shall be taken into consideration by the trial Court for all intents and purposes. However, the petitioners shall deposit an amount of Rs.15,000/- with the trial Court well before the next date fixed that shall be released in favour of respondent/plaintiff, as per rules.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondent/plaintiff in order to save him from unnecessary expenses and inconvenience. However, the respondent would be at liberty to file an appropriate application in case he has any grievance to express.

AUGUST 22, 2016
'D. Gulati'

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned : yes/no

Whether reportable : yes/no