

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

CR No. 5672 of 2016

Date of Decision: 05.09.2016

JANGIR SINGH

... *Petitioner*

VS.

SURESH CHAND AND OTHERS.

..Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Satish Goel, Advocate,
for the petitioner.

1. *Whether the Reporters of local newspaper 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. (Oral)

The present petition has been preferred against order dated 20.07.2016 passed by the Civil Judge (Junior Division), Chandigarh, whereby written statement filed by respondent No. 1 /defendant No. 1 has been taken on record even after framing of issues on 29.03.2016.

It is submitted that the respondent No. 1/defendant No. 1 filed an application dated 01.07.2016 (Annexure P-3) seeking permission to file written statement but the trial Court neither provided an opportunity to the petitioner to file response nor decided the application.

On the contrary, respondent No. 1/defendant No. 1 was permitted to file the written statement vide order impugned. On that day, three witnesses of the petitioner/plaintiff were present and examined but as respondent No. 1 filed the written statement on that very day, the Court was required to defer their examination in order to enable petitioner's counsel to go through the written statement.

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I have heard counsel for the petitioner, perused the paper book particularly order impugned.

Before advertng to the submissions made by counsel for the petitioner, it is appropriate to extract relevant part of the impugned order, reads as follows:-

“Written statement on behalf of defendant No. 1 namely Suresh has been filed by Advocate Sh. N.S. Rana. Copy supplied. Learned counsel for the parties have not pressed for any fresh issues. Three plaintiff witnesses i.e. PW-1 namely Neelam Singh, PW-2 namely Gurpreet Kaur and PW-3 V.K. Aneja are present and duly cross-examined through court commissioner Kanchan Bala. Fees of court commissioner assessed and duly paid.”

A plain reading of the aforesaid extract makes it evident that the order was passed in presence of counsel representing the petitioner/plaintiff before the trial Court and he neither raised an objection with regard to permitting respondent No. 1 to file the written statement nor sought an adjournment for examination of the witnesses after going through the written statement filed by respondent No. 1. On the contrary, it has been recorded that counsel for the parties have not pressed for any fresh issue after filing of written statement by respondent No. 1/defendant No. 1.

As the petitioner did not raise any issue with regard to the written statement filed by defendant No. 1 being taken on record despite framing of issues on an earlier occasion and even examined the witnesses, thereafter, the petitioner cannot be allowed to find fault in the impugned order more particularly in the circumstance that defence of respondent No. 1 was never

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struck off by the trial Court closing his right to file his written statement. Under these circumstances, mistake committed by the trial Court in framing issues without filing written statement by respondent No. 1 has been rightly rectified, therefore, no interference in exercise of judicial discretion by the trial Court is warranted.

In view of the above, the petition fails and is accordingly dismissed.

September 5, 2016
Suresh Kumar

[REKHA MITTAL]
JUDGE

Whether speaking / reasoned ***Yes / No***

Whether Reportable ***Yes / No***