

250

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

CR-6472-2015 (O&M)

Date of decision : 01.09.2016

Naval Kishore Kaura

... Petitioner

Versus

Gulshan Rai Kaura and others

... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. D. Khanna, Advocate
for the petitioner.

Mr. Akshay Bhan, Senior Advocate with
Mr. Vaibhav Sehgal, Advocate
for respondent Nos.1 and 2.

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporters or not?
3. Whether the judgment should be reported in the digest?

AMIT RAWAL, J. (ORAL)

The petitioner-defendant No.1 is aggrieved of the impugned order dated 27.08.2015 (Annexure P-1), whereby, its defence has been struck off on the ground of non-filing of written statement.

Mr. D. Khanna, learned counsel appearing on behalf of the petitioner-defendant No.1 submits that in a suit seeking separate possession by way of partition of the property in dispute, the petitioner has read as defendant No.2. He through his counsel has put in appearance on 23.09.2014 and on the next date of hearing, the Presiding Officer was on leave and on 30.10.2014, the petitioner-defendant No.1 moved an application for issuing of direction to the respondent(s)-plaintiff(s) to

produce on record the alleged documents and as per the zimini orders (Annexure P-2), the matter was kept pending for arguments on the application, but in the meantime, the respondent(s)-plaintiff(s) chose to file an application under Order 8 Rule 1 of the Code of Civil Procedure for striking off the defence. It is, in this backdrop of the matter, the written statement could not be filed and he undertake that he will file the written statement subject to the terms and conditions which this Court may impose.

Per contra, Mr. Akshay Bhan, learned Senior Counsel assisted by Mr. Vaibhav Sehgal, learned counsel appearing on behalf of the respondent(s)-plaintiff(s) submits that the petitioner-defendant No.1 had taken 13 adjournments which is evident from the zimini orders and was aware of the statutory provisions of law, yet he did not file the written statement, therefore, such concession should not be granted.

He submits that the defendant No.2 has been proceeded *ex parte*, but now an application for setting aside the *ex parte* proceedings is pending, thus, urges this Court for dismissal of the present revision petition with exemplary cost.

I have heard the learned counsel for the parties and appraised the paper book and of the view that as per the zimini orders (Annexure P-2) passed from time to time, after the application was moved on 30.10.2014 reveal that the matter was slated for consideration on the application, but in the meantime as noticed above, an application for striking off the defence was moved and impugned order has been passed. Since, the dispute is between brothers, I deem it appropriate to grant one opportunity to file the written statement on the next date of hearing i.e. 17.09.2016 subject to the cost of ₹ 10,000/- to be paid to the junior Counsel appearing on behalf of

the respondent(s)-plaintiff(s) in the High Court.

It is made clear that the cost shall be condition precedent.

It appear that since, the dispute is between the brothers, I deem it appropriate that they may not face the wrath of the prolongation of the litigation and accordingly, a direction is issued to the trial Court to expedite the disposal of the trial by affording 4-4 effective opportunities to the parties and thereafter, shall decide the suit as expeditiously as possible preferably within a period of one year.

With the aforesaid observations, the revision petition stands allowed.

01.09.2016
yogesh

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No