

233 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

CR-7445 OF 2015 (O&M)
Date of Decision: 31.03.2016

THE PRINCIPAL SECRETARY TO GOVERNMENT OF PUNJAB
AND OTHERS

.....Petitioners

Vs.

JAGDEV SINGH RAI AND OTHERS

....Respondents

CORAM: HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr. P.S. Mattewal, Additional A.G. Punjab
for the petitioners.

None for respondent No.1.

Mr. R.K. Shukla, Advocate
for respondent No.3.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 21.07.2014, vide which, the defence of the petitioners was struck off and the order dated 04.02.2015, vide which, the application filed for reviewing the aforesaid order, has been dismissed by the learned trial Court.

2. Learned counsel for the petitioners contended that the defence of the petitioners has been struck off by the learned trial Court vide impugned order dated 21.07.2014. He contended that earlier the petitioners had moved an application under Order 7 Rule 11 of the Code of Civil Procedure, 1908 (hereinafter called 'CPC') for rejection of the plaint. The said application was decided by the learned trial Court on 19.05.2014 and

after that the learned trial Court posted the case for filing the written statement for 05.07.2014. It was the old litigation and voluminous record was involved. The written statement could not be filed on that day and the case was adjourned to 21.07.2014 when the defence was struck off. He contended that only two opportunities have been granted to file the written statement. The valuable rights of the State of Punjab are involved in the suit and due to the impugned order, the petitioners have been deprived of to defend the suit. He contended that the provisions of Order 8 Rule 1 C.P.C. are not mandatory. He further pleaded that one opportunity may be granted to the petitioners to file their written statement.

3. Only respondent No.1-Jagdev Singh Rai is the contesting respondent in the present revision petition. He has appeared in person on 04.12.2015. Thereafter, he did not attend the Court. The notice was issued to respondent No.1 dasti for 10.02.2016. He was duly served but he did not come present.

4. I have duly considered aforesaid contentions.

5. This fact is not disputed that earlier the petitioners have filed an application under Order 7 Rule 11 CPC which was decided by the learned trial Court on 19.05.2014. After that the case was adjourned to 05.07.2014 for filing the written statement. On that day considering the request made by Sh. Hargovind Clerk that the preparation of written statement was in progress, the learned trial Court had adjourned the case to 21.07.2014 for filing the written statement, however, after giving the warning that failure thereof will invite the strict action. On 21.07.2014 again, the written statement was not filed. The perusal of the impugned order shows that the learned trial Court was inclined to give another opportunity to the

petitioners, subject to heavy cost but the officials of defendants No.1 and 2 who were present in the Court did not agree, so, due to that reason the defence of the petitioner was struck off. Thus, the impugned order depicts that the defence of the petitioner has been struck off simply on the ground that the officials attending the Court on behalf of the petitioners did not agree to pay the cost.

6. There is no dispute with the proposition of law that the provisions under Order 8 Rule 1 CPC, limiting the time period for filing the written statement, is not mandatory and is only directory in nature. To support this view, reference can be made to cases **Kailash Vs. Nanhku and Others 2005 (2) RCR (Civil) 379 and Mohd. Yusuf Vs. Faiz Mohd. And others, 2009 (1) RCR (Civil) 633**. This fact is not disputed that valuable rights of the petitioners are involved in the suit. The interest of justice requires that they should be afforded due opportunity to defend the suit. It is also settled principle of law that the rights of the parties should be decided on merits rather than technicalities.

7. Thus, keeping in view the aforesaid discussion, the present revision petition is hereby allowed. The petitioners are granted one opportunity to file the written statement, subject to Rs.5,000/- as cost to be paid by the petitioner No.2 from his own pocket to plaintiff/contesting respondent. The written statement be filed on 29.04.2016 the date fixed in the suit before the learned trial Court.

March 31, 2016
SwarnjitS

(DARSHAN SINGH)
JUDGE