

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

CR-1483-2017 (O&M)
Date of decision: 1.3.2017

Harbans Singh and others

...Petitioners

Versus

Surain Singh

...Respondent

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.MS Rana, Advocate for the petitioners

SNEH PRASHAR, J.

By filing the present petition under Article 227 of the Constitution of India, the petitioner is praying for setting aside the order dated 24.1.2017 (Annexure P2) passed by learned Civil Judge (Junior Division), Jalandhar vide which the defence of the petitioners / defendants was struck off.

The submissions made by Mr.MS Rana, Advocate representing the petitioners have been considered.

The plaintiff – respondent had filed a suit for permanent injunction seeking to restrain the defendants-petitioners from stopping him from opening the gate and window of his house in the street. Despite granting last opportunity subject to cost of Rs.1000/-, neither the written statement was filed nor the cost was deposited by the petitioners and therefore, their defence was struck off by learned

trial Court vide impugned order dated 24.1.2017 and the case was fixed for plaintiff's evidence.

Learned counsel for the petitioners submits that due to some unforeseen circumstances, the petitioners could not file the written statement on the date fixed in the case and their defence was struck off. The delay caused was neither intentional nor deliberate. Submitting that non-filing of the written statement will cause irreparable loss to the petitioners, learned counsel prayed that just one opportunity be granted to file the same.

Indeed, absence of pleadings on part of the petitioners-defendants will leave no scope for them to put up their defence and contest the suit. The case has just been adjourned for plaintiff's evidence and the evidence is yet to be led. In other words the case is still at the initial stage. In my considered opinion, grant on one last opportunity to the petitioners- defendants to file their written statement will cause no prejudice to the rights of the respondent-plaintiff, whereas proper pleadings and evidence adduced by both the parties will help the trial Court to better appreciate the issues involved and render substantial justice to the parties.

The above order is passed without issuing notice to the opposite party in order to avoid unnecessary delay in trial of the case.

Accordingly, the present revision petition is allowed.

The order dated 24.1.2017 is set aside and learned trial Court is directed to grant one effective opportunity to the petitioners-defendants to file the written statement subject to deposit of Rs.5000/- as cost with the District legal Services Authority, Jalandhar by them, which shall be in addition to the cost of Rs.1000/- already imposed as reflected in the impugned order.

However, it is made clear that if the petitioners-defendants fail to file written statement on the date so fixed by learned trial Court, no further opportunity shall be granted to them.

1.3.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No