

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

**Civil Revision No.2163 of 2017
DECIDED ON: March 24, 2017**

**EDITOR IN CHIEF, DAINIK BHASKAR, CHANDIGARH AND
OTHERS**

.....PETITIONERS...

VERSUS

ANSHU SAWHNEY

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Vishal Garg Narwana, Advocate
for the petitioners.

JASPAL SINGH, J.

By virtue of instant petition preferred under Article 227 of the Constitution of India, the petitioner has sought setting aside of order dated 16.07.2016 passed by Civil Judge (Junior Division), Chandigarh whereby the defence of the petitioners-defendants has been struck off and the case has been listed for the evidence of the respondent-plaintiff.

2. Assailing the impugned order dated 16.07.2016 passed by Civil Judge (Junior Division), Chandigarh, it has been vehemently argued by learned counsel for the petitioners that the same is perverse against law and facts and suffers from material irregularities. As such, the same is un-sustainable in the eyes of law and deserves to be set aside.

3. The brief facts of the case are that respondent-plaintiff filed a suit for causing loss to him by the petitioners/defendants in general public/society by

publication of her details in the petitioners' newspaper along with Rs.50 lakhs as compensation on account of mental, physical and reputation loss in the eyes of common people, society as well as from the neighbours. Though, the petitioners had earlier appeared before the trial court on 28.10.2015 through their counsel and provided him all the necessary documents for preparing written statement to be filed before the trial court yet their counsel neither informed about the status of the case nor filed written statement. Thus, the petitioners seeing the conduct of their counsel had no other option but to change him in the said case. Then, the petitioners/defendants engaged another counsel on 04.02.2016 and all the necessary documents could not be provided to the counsel engaged later on as those documents were in the custody of the counsel engaged earlier. It took time for the petitioners to gather all the documents for handing over the same to the second counsel. Meanwhile, ld. trial court struck off all the defence of the petitioners/defendants vide impugned order dated 16.07.2016. The non-filing of written statement is neither wilful nor intentional but had occurred due to the reason unfolded above.

4. While, concluding arguments, it has been submitted by learned counsel for the petitioners that though there is some lapse or omission on the part of the petitioners yet for the proper adjudication of the matter in controversy, they should be afforded an opportunity to file written statement and in case, the same is declined, the petitioners-defendants would be greatly prejudiced. Moreover, in the absence of the written statement, the matter in controversy is not likely to be adjudicated upon completely and in a judicious manner.

5. This Court has given an anxious thought to the submissions made

by learned counsel for the petitioners but find the same to be without any legal weight. For the proper appreciation of the various submissions made by learned counsel for the petitioners/defendants referred to above, it would be apt and proper to reproduce Order VIII Rule 1 CPC, which deals with the filing of written statement and the period in which defendant is required to file written statement. The said provisions reads as under:-

1. Written statement.- *The defendant shall, within thirty days from the date of service of summons on him, present a written statement of his defence:*

Provided that where the defendant fails to file the written statement within the said period of thirty day, he shall be allowed to file the same on such other day, as may be specified by the Court, for reasons to be recorded in writing, but which shall not be later than ninety days from the date of service of summons.

6. A glance at the aforesaid provisions makes it crystal clear that from the date of service of summons upon the defendant, he is required to file the written statement of his defence within a period of 30 days. However, a proviso appended to the aforesaid provisions further provided that where the defendant fails to file written statement within 30 days, he shall be allowed to file the same on such other day, as may be specified by the Court concerned, but which shall not be later than 90 days from the date of service of summons. The use of word “shall” in the proviso makes it mandatory. However, the judicial interpretation of the proviso is that each case has to be dealt with upon the facts and circumstances of its particular facts.

7. In the case in hand, it is an admitted fact that on receipt of

summons, the petitioners/defendants engaged their counsel, who appeared before the trial court on 28.10.2015. On his request, the case was adjourned time and again for filing of written statement. Subsequently, another counsel was engaged by the petitioners, who appeared before the trial court on 02.02.2016 i.e. after the expiry of more than 90 days. A story propounded by the petitioners with regard to the engaging of two different counsels does not appear to be genuine, especially, in the circumstances that the names of the counsel have not been disclosed in the entire petition. There is also nothing on the record to suggest that whether any action was taken against the previous counsel, who did not return the documents provided for filing written statement. Moreover, the defence of the petitioners was struck off on 16.07.2016, meaning thereby, that sufficient opportunities were afforded to the petitioners-defendants to file their written statement spanning over a period of approximately more than 8 months and 15 days. Despite availing opportunity for filing written statement for more than 8 months and 15 days, the petitioners/defendants failed to file written statement. Thus, the impugned order does not suffer from any illegality, infirmity or impropriety. As such, no interference by this Court is legally and factually justified just on equitable grounds.

5. In the light of what has been discussed above, this Court does not find any merit in the instant petition. As such, it stands dismissed.

6. No order as to costs.

March 24, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes