

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.2297 of 2017
DECIDED ON: March 30, 2017

MUNICIPAL CORPORATION, PHAGWARA AND ANOTHER

.....PETITIONERS...

VERSUS

IQBAL SINGH

....RESPONDENT...

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Ashok Kumar Bazaz, Advocate for
for the petitioners.

JASPAL SINGH, J. (Oral)

By virtue of instant petition preferred under Article 227 of the Constitution of India read with Section 151 of the Code of Civil Procedure, the petitioner has sought quashing/setting aside of order dated 16.12.2016 (Annexure P-6) passed by Additional Civil Judge (Senior Division), Phagwara vide which the defence of the petitioners/defendants has been struck off, with further prayer to afford an opportunity to file written statement.

2. Undoubtedly, a glance at the various documents available on file reveals that the suit was listed for first time on 04.08.2016 and the notices to the petitioners/defendants were issued for 17.08.2016 and on that day with the consent of the learned counsel for the parties, the matter was referred to the Lok Adalat for amicable settlement. However, the settlement could not mature and the file was taken up for filing written statement. Subsequently, vide impugned

order dated 16.12.2016, the defence of the petitioners was struck off.

3. In the facts and circumstances emerging from the various documents, it reveals that an ample and proper opportunity was not afforded to the petitioners to file written statement before its defence was struck off. Moreover, the period of 90 days provided under the Code is not mandatory and as per the facts and circumstances of a particular case, the Court can deviate from it with a view to impart justice to the parties. Otherwise also, it is well settled proposition of law that a person should not be condemned unheard. The mere fact that amicable settlement could not be arrived at between the parties does not mean that the defence of the Municipal Corporation i.e. petitioner/defendant is struck off. It was desirable on the part of the trial court to have afforded an opportunity to file the written statement.

4. Without commenting much upon the illegality or legality of the impugned order dated 16.12.2016 (Annexure P-6), the instant petition is disposed of with the direction to the trial court to afford one effective opportunity to the petitioners-defendants to file written statement, so, that the matter in controversy could be adjudicated upon effectively and judiciously.

5. With these observations, the instant petition stands disposed of.

March 30, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned: Yes

Whether reportable: Yes/No