

C.R. No. 2420 of 2017

(1)

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No. 2420 of 2017 (O&M)

DATE OF DECISION:03.04.2017

Gaddi Param Hans Swami Hira Nand Ji and anotherPetitioners

Versus

Joginder Singh @ Yogeshwar Nand @ JogeshwarRespondents
Nand and others

BEFORE:- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Nitesh Singhi, Advocate
for the petitioners.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside impugned order dated 24.1.2017 (Annexure P-1), vide which, respondent No.1 was allowed to file written statement in civil suit No. 2475 of 2013.

Briefly, the facts of the case are that the petitioners-plaintiffs filed a suit under Section 92 CPC for removal of respondent-defendant No.1 from the post/office of Mohatmimship/Mahantship Param Hans Hira Nand Puri, Nangal Bihalan, now Tehsil Mukerian, District Hoshiapur. The claim in the suit was also for declaration that petitioner-plaintiff No.1 was owner in possession of the properties/estate left by Swami Bodha Nand on the basis of registered Will executed on 31.7.2006, which was registered with Sub Registrar, Fatehgarh Sahib on 29.8.2006 vide Vasika number 163. The

prayer was also made for declaration that Will dated 27.5.2010 executed by Swami Bodha Nand Puri Chela of Sri Sri 1008 Swami Hira Nand Puri, which was alleged to be registered vide Vasika number 61 dated 27.5.2010 was illegal, null and void ab initio and was result of fraud and fabricated document. Upon notice respondents-defendants put in apperance and filed written statement except by respondent-defendant No.1. After framing of issues, the parties had to lead their evidence. After leading evidence by the plaintiffs, the evidence was closed. Subsequently, an application was moved by respondent-defendant No.1 for filing written statement, wherein, it was mentioned that during course of the proceedings, the counsel appearing for defendant No.1 came to know that written statement had not been filed so he be allowed to place on record the written statement. The application for filing written statement was allowed vide order dated 24.1.2017, which is subject matter of challenge in the present revision petition.

Learned counsel for the petitioners contends that purpose of filing application was to delay the suit proceedings as evidence of the petitioners-plaintiffs had already been closed on 26.9.2016. Thereafter the case was fixed for evidence of defendants and without examining any witness, the defendant has filed the present application, which is only a device to delay the proceedings of the present suit. Learned counsel further contends that the Court below without taking into consideration all these facts has allowed the application. He also submits that the application has been allowed subject to payment of meagre cost of ₹1000/-to be paid to the petitioners-plaintiffs.

Heard the arguments advanced by learned counsel for the

petitioners and have also gone through the impugned order and other documents available on the file.

A perusal of impugned order clearly shows that previous counsel, who appeared to contest the suit on behalf of respondent-defendant No.1 could not file written statement. Subsequently, respondent-defendant No.1 came to know that written statement has not been filed and an application was moved for filing written statement, which was allowed vide impugned order dated 24.1.2017. It is also mentioned in the impugned order that perusal of zimni orders would show that direction was issued to counsel for defendant No.1 to file written statement on 10.10.2012 but peursal of later zimni orders shows that the written statement was not filed. By recording a finding that due to inadvertence and over sight, no written statement was filed by respondent No.1 and it was actually the inaction/fault of counsel earlier appearing for defendant No.1, the application filed by respondent-defendant No.1 was allowed subject to payment of cost of ₹ 1000/- to be paid to the petitioners-plaintiffs.

No prejudice is going to be caused to the petitioners-plaintiffs by allowing of the application for placing on record the written statement. A perusal of application moved by respondent-defendant No.1 clearly shows that the suit was pending for defendants evidence and earlier defendant No.1 was represented through counsel Sh. Gagandeep Singh Virk. When no written statement was filed by earlier counsel then defendant No.1 changed his counsel. Written statement is necessary for just and proper decision of the case as in absence of written statement, averments made in the suit cannot be rebutted and respondent-defendant No.1 would suffer an irreparable loss, which cannot be compensated in any manner. Moreover, a

party should not be allowed to suffer because of fault on the part of counsel.

Accordingly, there is no merit in the contentions raised by learned counsel for the petitioner and the impugned order does not require any interference by this Court. Revision petition being devoid of any merit is hereby dismissed.

However, the cost amount is increased from ₹1,000/- to ₹5,000/- which shall be paid to the petitioners-plaintiffs by respondent-defendant No.1.

April 03, 2017
pooja

(DAYA CHAUDHARY)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes