

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

CR-2713-2017

Date of decision: 19.4.2017

Navneet Kaur

...Petitioner

Versus

Versha Rani and another

...Respondents

CORAM: HON'BLE MRS.JUSTICE SNEH PRASHAR

Present: Mr.Vikram Singh, Advocate for the petitioner

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 6.4.2017 (Annexure P8) passed by learned Civil Judge (Junior Division), Pehowa vide which his defence was struck off.

The submissions made by Mr.Vikram Singh, Advocate representing the petitioner have been considered.

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

Perusal of the copies of the zimni orders of learned trial

Court annexed with the present petition indicate that the petitioner (respondent No.1 before learned trial Court) on having been served through her mother-in-law was proceeded against ex parte vide order dated 15.9.2016. On the very next date of hearing i.e. 12.1.2017, she appeared and filed an application for setting aside the ex-parte proceedings, which after obtaining reply from respondent No.1 (petitioner before learned trial Court) was allowed vide order dated 23.2.2017. The petition thereafter was fixed for filing of reply by the petitioner and as she failed to file reply on the date fixed, one more opportunity subject to payment of costs of Rs.500/- was allowed to her. However, on the next date of hearing i.e. 6.4.2017, her request for further opportunity was declined and her defence was struck off.

Though, the petitioner had failed to file her reply on 6.4.2017, but it had come in the impugned order of learned trial Court that the costs of Rs.500/- imposed upon the petitioner was deposited in the legal aid fund in compliance of the previous order of the Court. It is the principle of natural justice that no person should be condemned unheard. The petition is still at the initial stage. In case the petitioner is not allowed to file a written statement, she will have no pleadings to rely upon to set up a defence and adduce evidence to substantiate the same to rebut the claim of the opposite party and that undoubtedly will seriously prejudice her rights. Proper pleadings and evidence adduced by both the parties will also help the trial Court to better appreciate the issues involved and render substantial justice to the parties.

To avoid unnecessary delay in the matter no notice is being issued to the respondents. In the interest of justice, in my considered opinion, the petitioner (respondent No.1) deserves to be given one last opportunity to file written statement as that will cause no prejudice to the rights of respondent No.1, who has yet to start with her evidence.

Resultantly, the present revision petition is allowed. The order dated 6.4.2017 is set aside and learned trial Court is directed to grant one effective opportunity to the petitioner to file the written statement subject to deposit of Rs.3000/- as cost with the District Legal Services Authority, Kurukshetra.

However, it is made clear that if the petitioner fails to file written statement on the date so fixed by learned trial Court, no further opportunity shall be granted to her.

19.4.2017
gsv

(SNEH PRASHAR)
JUDGE

Whether speaking / reasoned?

Yes / No

Whether reportable?

Yes / No