

Civil Revision No.2900 of 2017

[1]

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

Sr. No. 114

Civil Revision No. 2900 of 2017

Date of decision: April 26, 2017

Babu Khan @ Babu and another

.... Petitioners

Versus

Mohabat Ali

.... Respondent

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Harkesh Manuja, Advocate,
for the petitioners.

JASPAL SINGH, J.

Through the instant petition preferred under Article 227 of the Constitution of India, petitioners have sought setting aside of the order dated December 02, 2016, passed by learned Civil Judge (Jr. Divn.) Panipat, whereby the defence of the petitioners/defendants has been struck off on account of non-filing of written statement as well as reply to the application under Order XXXIX Rules 1 & 2 CPC.

2. Undisputably, the suit was filed on May 20, 2016 and in response to the notice issued to the petitioners/defendants, they appeared in the court on July 15, 2016. Thereafter, the matter was listed for filing

Civil Revision No.2900 of 2017

[2]

written statement for August 11, 2016. Subsequently, it was adjourned on two occasions i.e. on July 29, 2016 and November 04, 2016 for filing of written statement and finally, vide impugned order dated December 02, 2016, the defence of the petitioners/defendants has been struck off. It cannot be said that petitioners/defendants have not been afforded an ample opportunity to file their written statement before striking off their defence. Rather, an ample opportunity was afforded to them. Even, after striking off the defence, vide order dated December 02, 2016, till date they remained inactive. The suit was adjourned for a number of times for the evidence of the plaintiff and in the meanwhile, two witnesses have already been examined by the respondent/plaintiff. Petitioners did not take the matter seriously and failed to challenge the order dated December 02, 2016 immediately after its passing and when the evidence has already been adduced by the respondent/plaintiff, they have approached this court. In case the opportunity is afforded to the petitioners/defendants to file the written statement at this stage, it would amount to de-novo trial, that too, after the examination of the witnesses by the respondent/plaintiff which is otherwise not permissible under law.

3. Dismissed.

April 26, 2017

Ankur

**(JASPAL SINGH)
JUDGE**

Whether Speaking/Reasoned

Yes/No

Whether Reportable

Yes/No