

124.

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

Civil Revision-506-2017

Date of decision:08.02.2017

NARINDER MOHAN MITTAL AND ORS ... Petitioners

versus

NIRMAL KUMAR AND ANR Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sharan Sethi, Advocate,
 for the petitioners.

 Mr. Roopak Bansal, Advocate,
 for the respondents-caveator.

HARI PAL VERMA, J. (Oral)

The present revision petition has been filed by the petitioners-tenants against the order dated 03.01.2017 passed by learned Civil Judge (Junior Division), Chandigarh, whereby the defence of the petitioners has been struck off.

Learned counsel for the petitioners has argued that the petitioners could not file their respective reply for the reason that the petitioner No.1-Narinder Mohan Mittal was not keeping well and is getting regular treatment for his illness i.e. prostate cancer from PGIMER, Chandigarh. From time to time, he was admitted in PGIMER for chemotherapy. He further submits that reply could not be filed as marriage of daughter of one of the petitioners was held on

09.12.2016 and they were busy in the said marriage. He has argued that valuable right of the petitioners shall be lost in case they are not permitted to file written statement. Since the case is fixed before the trial Court for 09.02.2017, petitioners undertake to file reply by tomorrow i.e. 09.02.2017 and shall not hamper/delay the proceedings in any manner.

On the other hand, learned counsel for the respondents has argued that the petitioners were served for 16.04.2016 and they have put in appearance through their counsel, but despite there being numerous opportunities, petitioners have not intentionally filed their written statement in order to delay the proceedings. Petitioners are tenants on a very meager rent and intend to delay the proceedings for this purpose as well.

I have heard learned counsel for the parties.

There is no dispute that the petitioners were required to file reply within 90 days as provided under Order 8 Rule 1 CPC, 1908, but the said provision is directory in nature and is not mandatory. Considering the fact that petitioner No.1 is undergoing regular treatment from PGIMER for serious ailment and there being a marriage of daughter of one of the petitioners, it is presumed that they were busy in arranging for the marriage. This Court feels that the petitioners deserves to be afforded one opportunity to file their written statement.

Accordingly, considering the above factual matrix, present petition is allowed. The impugned order dated 03.01.2017 is set aside

and the petitioners are granted one opportunity to file their written statement.

Since the case is stated to be fixed before the trial Court for tomorrow i.e. 09.02.2017, petitioners shall file their written statement before the trial Court positively by 09.02.2017 subject to payment of ₹1,00,000/- as costs. The amount of the costs shall be disbursed to the respondents. It is made clear that the petitioners shall not hamper/delay the proceedings.

The exemplary cost of ₹1,00,000/- is being imposed for the reason that the petitioners are the owner of an adjacent shop, which is equal in size of the shop in dispute and has been rented out on a much higher rent.

(HARI PAL VERMA)
JUDGE

08.02.2017
sanjeev

Whether speaking/reasoned? Yes/No
Whether reportable? Yes/No