

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

CR No. 5310 of 2017(O&M)

Date of decision: 11.8.2017

Kulwant Rai and others

....Petitioners

VERSUS

Ashok Kumar and others

.....Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present: Mr. Rajeev Godara, Advocate for the petitioners.

REKHA MITTAL, J.(Oral)

The present petition directs challenge against order dated 13.02.2017 (Annexure P-1) and dated 18.04.2017 (Annexure P-3) whereby defence of the petitioners was struck off for want of filing of written statement and application filed by the petitioners for permission to file the written statement came to be dismissed vide order dated 18.04.2017.

Counsel for the petitioners has submitted that the petitioners were not impleaded as party in the suit filed by the respondents/plaintiffs. Later, an application under Order 1 Rule 10 of the Code of Civil Procedure, 1908 was filed by the petitioners and the same was allowed by the trial Court. The said order was challenged by the respondents/plaintiffs by way of an appeal before the Court of District Judge that came to be dismissed as withdrawn on 17.05.2017. It is further submitted that the petitioners failed to file the written statement within a period of 90 days and their defence was ordered to be struck off on 13.02.2017. It is argued with vehemence that a serious prejudice shall be caused to the petitioners

in case they are not permitted to file the written statement and defend the proceedings. It is further submitted that the entire effort of the petitioners to be impleaded as a party would go waste in case the impugned orders are not set aside.

Another submission made by counsel is that in response to the application filed by the petitioners permitting them to file the written statement, counsel for the plaintiffs/respondents raised no objection as has been recorded in the order dated 18.04.2017. Counsel would apprise the Court that subsequent to striking of defence of the petitioners, the respondents/plaintiffs till date have not adduced any evidence despite number of opportunities granted for the purpose. It is prayed that in the interest of substantial justice, the petitioners may be allowed one opportunity to file the written statement and they are ready to pay requisite compensation for delay, if any, attributable to them.

I have heard counsel for the petitioners, perused the paper-book particularly the orders impugned.

The trial Court closed right of the petitioners to file the written statement with the observations that statutory period of 90 days has already elapsed and there is no justifiable reason to adjourn the case. It is a matter of record that in response to the application filed by the petitioners for permitting them to file the written statement, the respondents/plaintiffs raised no objection if the petitioners are allowed an opportunity to file the written statement. Till date, the respondents/plaintiffs have not adduced any evidence. No doubt, the petitioners failed to avail of the opportunities allowed for filing of the written statement but in case they are not permitted to file the written statement, it would of serious consequence for

them and it would amount to virtually denying them a right to defend the proceedings initiated at the instance of the plaintiffs.

Keeping in mind the principles of natural justice coupled with the factum that the respondents/plaintiffs raised no objection against filing of written statement by the petitioners, it is expedient in the interest of justice that the petitioners are allowed one opportunity to file the written statement on the date already fixed before the trial Court subject to payment of costs of Rs.10,000/- to be deposited with the Secretary, Legal Services Authority, Sirsa.

Before parting with this order, it is clarified that the petition has been disposed of without notice to the respondents in order to save them from unnecessary expense and inconvenience. However, the respondents would be at liberty to file an appropriate application in case they have any grievance to express.

Disposed of accordingly.

AUGUST 11, 2017

‘D. Gulati’

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned	:	yes/no
Whether reportable	:	yes/no