

In the High Court of Punjab and Haryana at Chandigarh

CR-5702 of 2017(O&M)
Date of Decision: 25.8.2017

Ajay Sharma

---Petitioner

versus

Narender Kaur and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Viney Saini, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against order dated 31.7.2017 passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri whereby defence of the petitioner/defendant has been struck off for want of filing of written statement.

Counsel for the petitioner has submitted that in the suit filed by Narender Kaur-respondent No. 1 against Chhindi and others, the petitioner was not impleaded as a party. He filed application under Order 1 Rule 10 read with Section 151 of the Code of Civil Procedure (in short "CPC") for impleading him as a party and his prayer was allowed by the trial court vide order dated 19.5.2017. It is further submitted that defence of the petitioner has been struck off for want of filing of written statement on 31.7.2017, well before expiry of period of 90 days, permissible in law for filing of written statement. It is further submitted that a serious prejudice shall be

caused to the petitioner in case he is not permitted to file the written statement. It is prayed that the petitioner may be permitted to file the written statement on the date already fixed before the trial court i.e. 1.9.2017.

I have heard counsel for the petitioner, perused the paper book and various zimni orders available on record.

Perusal of order dated 19.5.2017 substantiates plea of the petitioner that he was allowed to be impleaded as one of the defendants on 19.5.2017 while allowing his application under Order 1 Rule 10 CPC by the trial court and the case was adjourned to 20.7.2017. On the adjourned date, the petitioner did not file the written statement and the case was adjourned to 31.7.2017 for the said purpose subject to last opportunity. The impugned order was passed on 31.7.2017 without adverting to the provisions in CPC that a defendant is entitled to avail 90 days for filing the written statement. In case the petitioner is not permitted to file the written statement, his effort to be impleaded as a party would go waste and he would be deprived of an opportunity to defend the proceedings. Taking into consideration the provisions of CPC coupled with the principle of natural justice, the present petition is allowed and the petitioner is granted one opportunity to file the written statement on or before 1.9.2017, with a copy in advance to counsel for the respondent/plaintiff.

With these observations, the petition stands disposed of. Failure of the petitioner to avail of the opportunity in terms of order of this court would entail dismissal of the petition.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent in order to avoid

inconvenience and incurring expenditure by her. However, if the respondent has any grievance to express, she shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

25.8.2017

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No