

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

CR-6252-2017 (O&M)

Date of decision: 12.10.2017

RAM BHAGAT (NOW DECEASED THROUGH HIS LRS) AND ORS.

...Petitioners

Versus

JAI BHAGWAN AND OTHERS

...Respondents

CORAM: HON'BLE MRS. JUSTICE REKHA MITTAL

Present : Mr. Vivek Khatri, Advocate for the petitioners.

REKHA MITTAL, J. (Oral)

CM No.21568-CII of 2017

Heard.

Allowed as prayed for. Annexure P-5 is taken on record subject to just exceptions.

Main Case

The petitioners have filed the instant petition to express their grievance against order dated 08.09.2017 (Annexure P-4) passed by the Additional Civil Judge (Sr. Div.), Meham whereby application of the petitioners for striking off defence of the respondents/defendants for want of filing of the written statement within the stipulated period of 90 days has been dismissed.

Counsel for the petitioners has submitted that the

petitioners/plaintiffs have filed a suit for declaration and permanent injunction on the premise that the petitioners and defendant No.1 are owners in joint possession of suit land measuring 262 Kanals 17 Marlas in equal share and defendants No.1 to 4 may be restrained from alienating the suit land and ousting the plaintiffs from the suit land.

The defendants caused appearance through counsel on 17.11.2014 and the case was adjourned to 28.11.2014. They failed to file the written statement within the stipulated period of 90 days but filed an application under Order 7 Rule 11 CPC for rejection of plaint and the application was decided by the trial Court vide order dated 08.09.2017 (Annexure P-4). The case was adjourned to 17.09.2017 for filing of written statement and on that day, written statement filed by the defendants has been taken on record. It is argued with vehemence that as the defendants failed to file the written statement within the stipulated period of 90 days and never prayed for extension of time by giving justifiable reason, the trial Court has committed a grave error rather illegality by dismissing application of the petitioners/plaintiffs.

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

Indisputably, the defendants caused appearance on 14.11.2014 and failed to file the written statement till 02.02.2015, the day they filed the application for rejection of plaint by invoking Order 7 Rule 11 CPC. The application for rejection of plaint remained pending with the Court for

more than two years and was finally disposed of on 08.09.2017 and the respondents/defendants filed the written statement on 17.09.2017, the date to which case was adjourned from 08.09.2017.

There cannot be any dispute about the settled position in law that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature. In this context, reference can be made to judgment of Hon'ble the Supreme Court of India **Salem Bar Association Tamil Nadu VS. Union of India, AIR 2005 SC 3353**. In view of the facts and circumstances that the trial Court did not think it proper to strike off defence for want of filing of written statement on expiry of period of 90 days, the application under Order 7 Rule 11 CPC was disposed of on 08.09.2017 and the written statement filed by the defendants on 17.09.2017 has already been taken on record, I do not find any patent error much less illegality in the order impugned warranting intervention in exercise of supervisory jurisdiction of the Court. I would hasten to add that procedural lapses/technicalities cannot be allowed to stand in the way of substantial justice unless conduct of a party reflects that delay in doing the needful is intentional rather malafide.

For the foregoing reasons, petition fails and is accordingly dismissed.

12.10.2017

ashok

(REKHA MITTAL)
JUDGE

Whether speaking/reasoned:

Yes / No

Whether reportable:

Yes / No