

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

**CR No. 6627 of 2016
DECIDED ON: FEBRUARY 20, 2017**

USHA AND OTHERS

.....PETITIONERS

VERSUS

SANTOSH KUMARI AND ORS

....RESPONDENTS

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

Present: Mr. Susheel Gautam, Advocate
for the petitioners.

Mr. Suman Jain, Advocate
for respondents No.2 to 4.

JASPAL SINGH, J

By virtue of instant civil revision petitioners/defendants have sought the setting aside of order dated January 14, 2013 (Annexure P-10) whereby, defence of petitioners No.1 to 3 was struck off and order dated February 22, 2013 (Annexure P-11) vide which, petitioners No.1 to 3 were proceeded against ex-parte as well as order dated March 21, 2013 (Annexure P-12) passed by learned Civil Judge (Jr. Division), Panipat whereby, petitioners No. 4 and 5 were proceeded against ex-parte in a case titled Santosh Kumari & another vs. Usha and others and their defence was struck off. Petitioners have further sought the setting aside of order dated August 31, 2016 (Annexure P-13)

vide which an application moved by them for recalling the order dated January 14, 2013 and for setting aside the ex-parte order dated February 22, 2013 and March 21, 2013, passed by learned Civil Judge (Jr. Division), Panipat, was dismissed.

The contention of learned counsel for the petitioners is that the impugned order dated August 31, 2016 whereby an application moved by petitioners for recalling the order dated January 14, 2013 and for setting aside the orders February 22, 2013 and March 21, 2013 has been dismissed, is against the law and are liable to be set aside. In case the petitioners/contesting defendants are not allowed to join the proceedings and to file the written statements after setting aside the above-referred order(s), an irreparable loss and injury which the petitioners are going to suffer cannot be compensated in any way. In fact, respondents/plaintiffs played a fraud upon them. As per the assurance given by the respondents/plaintiffs, petitioners/defendants withdrew the suit preferred by them whereas, the respondents/plaintiffs did not withdraw their suit and continued with the same in which the various orders under challenge have been passed by the court concerned. Moreover, the suit filed by the respondents/plaintiffs is at initial stage and no prejudice would be caused in any manner to the respondents/plaintiffs and they can be compensated by way of cost.

Per contra, learned counsel for the respondents/plaintiffs have refuted the afore-said contentions put forth by learned counsel for the petitioners/defendants submitting that the petitioners/defendants remain negligent in defending their suit. They were under an obligation to file a written statement within a prescribed period of 90 days from the date of their service.

Firstly, petitioners/defendants delayed the proceedings before the trial Court by evading their service. All the efforts were made by the respondents/plaintiffs to serve them through ordinary process and ultimately, the Court has to adopt the substituted services for getting the service effected upon petitioners/defendants. Even then, neither they filed written statement(s) nor they moved any application seeking for the extension of time beyond the period of 90 days of service effected upon them. The period prescribed under Order VIII Rule 1 of the Code of Civil Procedure (for short 'CPC') is to expedite the trial. The petitioners/defendants were proceeded against ex-parte after adopting due process and as such there is no ground either for setting aside the ex-parte proceedings or for setting aside the order whereby, their defence have been struck off.

This Court has given an anxious thought to the submissions made by learned counsel for the parties and has perused the record available on file.

Undoubtedly, petitioners/defendants were proceeded against ex-parte and when they appeared before the concerned Court, they were granted a period of more than 90 days for filing written statement. Though, the trial Court has no power to review its order, especially, in the circumstances that a revision lies to High Court against the order whereby, the defence of the defendants have been struck off. Yet, an application lies before the same Court for setting aside the ex-parte proceedings.

Adverting to the facts of the case in hand concededly, suit filed by the petitioners/defendants was withdrawn whereas, the proceedings in the suit, in which, impugned order(s) were passed remained continued and subsequent, thereto, the impugned order(s) were passed. No doubt purpose of prescribing a

period of 90 days in the CPC for filing written statement is to expedite the trial but not to scuttle the right of hearing. It does not impose an embargo on the powers of the Court to extend the time, especially, in the circumstances, that no penal consequences have been provided. Thus, it can be said that provisions contained under Order VIII Rule 1 CPC being in the domain of procedural law are not mandatory. In the facts and circumstances of a particular case, the orders striking the defence can be quashed/set aside and the time can be extended. In the case in hand, the plaintiffs/respondents can be compensated by way of cost and it would be desirable that the suit should be decided on merits.

In the light of what has been discussed above, instant civil revision is allowed but subject to payment of ₹1,00,000/- as cost. Consequently, impugned orders are set aside. Out of the above-said amount of ₹1,00,000/-, an amount of ₹50,000/- shall be deposited with the District Legal Services Authority, Panipat whereas, the balance amount i.e. ₹50,000/- shall be paid to the respondents/plaintiffs within a period of one month from the date of receipt of certified copy of this order.

FEBRUARY 20, 2017
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(JASPAL SINGH)
JUDGE

Whether speaking/reasoned *Yes/No*

Whether reportable *Yes/No*