

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

**CR No.7493 of 2017 (O&M)
Date of decision: 19.12.2017**

Alka and another

..... Petitioners

Versus

Hari Singh and others

.....Respondents

BEFORE: HON'BLE MR. JUSTICE B.S. WALIA.

Present: Mr. Sumit Sangwan, Advocate for the petitioners.
Mr. R.S. Tacoria, Advocate for respondent No.1.

B.S. WALIA, J. (ORAL)

[1] Mr. R.S. Tacoria, learned Counsel puts in appearance on behalf of respondent No.1 and filed his power of attorney. The same is taken on record.

[2] Heard learned counsel for the parties. Petitioners/defendant Nos.56 and 58 (hereinafter referred to as the petitioners) pray for setting aside order dated 16.09.2017 striking off their defence on account of failure to file the written statement.

[3] Plea is that written statement could not be filed in view of their counsel having met with an accident.

[4] Perusal of the impugned order reveals that the written statement was not filed despite availing number of opportunities. Petitioners counsel met with an accident in July 2017. Admittedly, after putting in appearance on 02.11.2016, the petitioners availed close to seven opportunities for filing of written statement upto 04.07.2017.

[5] No doubt, a defendant can be allowed time to file the written statement beyond 90 days stipulated under Order 8 Rule 1 CPC if exceptional circumstances are made out. However, the facts of the case point to the indifferent attitude of the petitioners on account of failure to file the written statement despite availing number of opportunities.

[6] Learned counsel for the petitioners contends that on majority of the dates, the case had been listed for service of remaining defendants. Be that as it may, non service of remaining defendants did not confer a right on the petitioners to not file the written statement within the stipulated period of time.

[7] Faced with the aforementioned situation, learned counsel for the petitioners contended that one opportunity be granted on such terms as to costs as deemed just and proper by this Court failing which irreparable loss would be occasioned to the petitioners.

[8] Learned counsel for respondent No.1 on the other hand contended that despite availing number of opportunities, petitioners failed to file the written statement. Therefore, the learned trial court rightly passed the impugned order. Learned Counsel contended that in the circumstances, no interference was called for with the order passed by the learned trial Court. Learned counsel further contended that if the Court was inclined to consider grant of opportunity to petitioners to file the written statement, then the same should be subject to exemplary costs.

[9] Taking into account all aspects of the matter, I am of the considered view that although the conduct of the petitioners in not filing the written statement despite availing number of opportunities does not depict conduct required of a diligent litigant, yet having

regard to the fact that grave prejudice would be caused to the petitioners in case opportunity is not granted to them to file the written statement, I deem it appropriate to allow one opportunity for filing written statement subject to payment of costs.

[10] Accordingly, impugned order dated 16.09.2017 (Annexure P1) is set aside. Learned trial Court shall permit the petitioners/defendants No.56 and 58 to file written statement within ten days from today subject to their paying Rs. 15,000/- as costs to the plaintiff/respondent No.1. It is made clear that in case written statement is not filed by the petitioners within the aforementioned period of time, then in that eventuality, no further opportunity shall be granted.

[11] Revision petition allowed as above.

(B.S. Walia)
Judge

19.12.2017
amit

Note:

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| 1. Whether the order is speaking/reasoned | : | Yes/No. |
| 2. Whether the order is reportable | : | Yes/No. |