

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH****Date of decision: 30.11.2017****CR No.8369 of 2017**

Sunita

...Petitioner

Vs.

Ran Dhir Singh & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Abhilaksh Grover, Advocate, for the petitioner.

RAJIV NARAIN RAINA, J. (ORAL)

1. What the Civil Judge (Senior Division), Rewari did till 08.09.2017 in the matter of grant of adjournments apart, it ought not to have struck off the defence of the defendant No.3, i.e., the present petitioner and then to adjourn the case to 02.01.2018 for attempting a settlement through Alternate Dispute Resolution (ADR) of the dispute by invoking Section 89 of the Code of Civil Procedure and simultaneously ordering the presence of parties in court for admission and denial of documents and for settling the issues. This is putting too much triple action for 02.01.2018, i.e., the next date of hearing which would appear inconsistent with resort to the mediation and conciliation process, which itself may independently consume time.

2. Alternatively, the Court could have imposed costs on the petitioner and in case there was failure to deposit such costs, could have proceeded to strike off her defence. It is inherent in the judicial process that Court must guard against a miscarriage of justice and should take such steps to prevent it as it may think fit in its wisdom by other possible means. A matter decided on merits serves the cause of justice best.

3. Having regard to the interim orders passed, placed at Annex P-6 to Annex P-8, I would return the petitioner – defendant No.3 to her defence on merits and to achieve this end, the impugned order dated 12.10.2017 has to be set aside to the extent it strikes off the defence of the petitioner. If the plaintiffs have been prejudiced by the delay in filing written statement by defendant No.3, they can be compensated monetarily. It will serve no useful purpose to issue notice/summons to the petitioners, which will only delay the proceedings and burden the plaintiffs with needless expense in defending this petition. In any case, no prejudice will be caused to them if the written statement of the petitioner is received and then issues are framed.

4. As a result, the instant petition is allowed. The impugned order is set aside to the extent indicated above. The petitioner would pay ₹2000/- to the plaintiffs as costs on the next date of hearing. The written statement be filed by the petitioner before 22.12.2017 with advance copy.

30.11.2017

Vimal

**[RAJIV NARAIN RAINA]
JUDGE**

Whether speaking/reasoned: Yes

Whether Reportable: No