

115

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.8610 of 2017

Date of Decision : 11.12.2017

Lalit Kumar and another

....Petitioners

versus

Kamlesh Rani

....Respondent

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

Present: Mr. J.S.Saini, Advocate
for the petitioners.

B.S. WALIA, JUDGE (ORAL)

[1] Challenge in the revision petition is to order dated 17.07.2017, passed by the learned Addl. Civil Judge (Senior Division), Ambala, in Civil Suit No.CS/109/2016 striking off the defence of the defendants-petitioners.

[2] Brief facts of the case leading to the filing of the revision petition are that the defendants-petitioners put in appearance before the learned trial Court on 05.02.2016 whereupon the case was adjourned to 04.03.2016 for effecting service of defendant No.2. Thereafter on 27.04.2016, power of attorney was filed on behalf of the defendants-petitioners and the case was adjourned to 19.05.2016 for filing of written statement. However, on 19.05.2016, the written statement was not filed and on request the case was adjourned to 12.07.2016 and thereafter to 01.09.2016 for filing of the written statement. On 01.09.2016, the defendants-petitioners did not put in appearance, therefore they were proceeded ex-parte.

[3] Application moved for setting aside ex-parte proceedings dated

01.09.2016 was allowed vide order dated 15.11.2016 subject to payment of costs of Rs.200/- and the case was adjourned to 03.02.2017 for filing of written statement while making it clear that only one opportunity would be given for filing of the written statement by way of last opportunity. However, on 03.02.2017, the written statement was not filed nor costs of Rs.200/- paid. In the circumstances, by way of one more last opportunity the case was adjourned to 18.04.2017 for filing of written statement subject to payment of costs of Rs.300/- i.e. Rs. 200/- imposed vide order dated 15.11.2016 and Rs. 100/- imposed vide order dated 03.02.2017.

[4] That on 18.04.2017, again the case was adjourned to 17.07.2017 by way of last opportunity for filing of written statement, failing which, it was made clear that the defence would be struck off. On 17.07.2017, the written statement was again not filed and an adjournment was sought for filing of written statement. The learned trial Court while taking into account number of opportunities having already been granted to the defendants-petitioners to file the written statement but of the same not having been filed, ordered the striking off, of defence of the defendants-petitioners by observing that even while setting aside the ex parte proceedings the defendants-petitioners had been directed to file the written statement but despite grant of number of opportunities the same had not been done and since sufficient time had been granted to the defendants-petitioners to file the written statement but the same had not been done, no further adjournment was warranted in the facts and circumstances of the case. Thereupon, the case was adjourned to 04.10.2017 for evidence of the plaintiff-respondent.

[5] Learned counsel for the defendants-petitioners while referring to order dated 04.10.2017 stated that no evidence had been lead on behalf of

the plaintiff-respondent and in fact the case had been adjourned to 05.01.2018. Learned counsel further contended that the written statement could not be filed on account of personal difficulty of the counsel of the defendants-petitioners, therefore, one more opportunity be granted for filing the written statement.

[6] I have considered the submissions made by learned counsel for the petitioners. The facts of the case go to show beyond an iota of doubt that number of opportunities were granted to the defendants-petitioners for filing of written statement, but the written statement was not filed. Earlier, the defendants-petitioners were proceeded ex parte vide order dated 01.09.2016. Vide order dated 15.11.2016, the learned Addl. Civil Judge (Senior Division)/RC, Ambala, set aside the ex parte proceedings subject to payment of Rs.200/- as costs while making it clear that only one opportunity would be given for filing of written statement. The matter was adjourned to 03.02.2017 for filing of written statement. However, as has been noticed above, the written statement was not filed even on the said date and in addition to the costs of Rs.200/- imposed vide order dated 15.11.2016, the case was adjourned to 18.04.2017 for filing of written statement by way of one more last opportunity, subject to payment of costs of Rs.300/- i.e. Rs.200/- imposed vide order dated 15.11.2016 and Rs.100/- imposed vide order dated 03.02.2016. However, the written statement was not filed even on 18.04.2017, whereupon the case was adjourned to 17.07.2017 while making it clear that in case written statement was not filed, the defence would be struck off. However, even on 17.07.2017, the written statement was not filed and adjournment was sought for filing of written statement. In the circumstances, the learned trial Court ordered the striking off, of

defence of the defendants-petitioners. The position as noted above reveals beyond an iota of doubt the careless and indifferent attitude of the defendants-petitioners in not filing the written statement despite having been granted number of opportunities as also imposition of costs besides setting aside of ex parte proceedings dated 01.09.2016. The defendants-petitioners were proceeded ex-parte vide order dated 01.09.2016 but even on setting aside of said ex parte proceedings and despite caution having been sounded in the order dated 15.11.2016 that only one opportunity would be granted subject to payment of costs, the defendants-petitioners did not file the written statement on the adjourned date. Thereafter, again indulgence were shown by imposing costs of Rs.100/- and granting one more opportunity but again written statement was not filed, thereupon the matter was adjourned to 17.07.2017 while making it clear that in case written statement was not filed, defence of the defendants-petitioners would be struck off. But again for reasons best known to the defendants-petitioners, the written statement was not filed. In the circumstances, the impugned order was passed.

[7] In the facts and circumstances of the case, I am of the considered view that the impugned order dated 17.07.2017, passed by the learned Addl. Civil Judge (Senior Division), Ambala does not warrant any interference whatsoever as it is not open to a party to prosecute its defence in the manner the party desires without showing due sanctity and solemnity required in prosecuting its defence in judicial proceedings. The plea that the provisions prescribed under Order 8 Rule 10 of the Code of Civil Procedure are directory and not mandatory is of no avail for although the time period stipulated for filing of written statement is directory and can be extended

but the same is subject to sufficient cause being made out. In the case in hand no sufficient cause is made out for not being able to file the written statement despite availing numerous opportunities and the plea that the written statement could not be filed due to personal difficulty of the counsel is also of no avail as neither the difficulty of the counsel has been set out nor has his affidavit in support thereof been filed. The zimni orders placed on record by way of application dated 11.12.2017 also do not advance the case of the defendants-petitioners in any manner.

[8] The revision petition is bereft of merit. Accordingly, the same is dismissed in limine.

(B.S. WALIA)
JUDGE

December 11, 2017

rajesh.k.khurana

Whether speaking/reasoned:

Yes/No

Whether reportable:

Yes/No