

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

Sr. No.239

C.R. No.2410 of 2017

Date of decision: 13.09.2018

Sunita Devi and another

....Petitioners

versus

Kushinder Paul Mohindra

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Jagjot Singh Lalli, Advocate
for the petitioners.

Mr. Liaqat Ali, Advocate
for the respondent.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 15.09.2016 passed by the Civil Judge (Junior Division), Ludhiana (for short- 'the Trial Court'), striking off the petitioners' defence for having not filed their written statement even after availing of three opportunities.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein possession by way of specific performance of agreement to sell dated 08.03.2014 (read with Endorsements/Acknowledgments dated 05.06.2015 and 01.12.2015) pertaining to the property so detailed and described in the head note of the plaint (for short – the suit property). In the said suit, the petitioners, who were the defendants, were granted three

effective opportunities to file their written statement which they failed to avail of leading to the passing of the order under challenge.

Learned counsel for the petitioners submits that the respondent's suit was initially adjourned to 06.01.2016 to enable the petitioners/defendants to file their written statement. However, the same could not be filed as certain documents were not attached with the plaint which on an application moved by them were supplied to the petitioners only on 05.04.2016. Thereafter, on two dates, the Court was not held as the Presiding Officer was on leave and therefore, the Trial Court had been rather harsh in closing the evidence of the petitioners. He prays that one effective opportunity may be granted to the petitioners to file their written statement subject to reasonable costs to be assessed by this Court.

Learned counsel for the respondent submits that the petitioners did not file their written statement even after availing of three effective opportunities and therefore, there is no error in the order passed by the Trial Court.

After hearing learned counsel for the parties, I am of the view that the first opportunity which was granted to the petitioners to file their written statement could not be availed of by them as by that time they had not been supplied all the necessary documents which were required for them to file their written statement. Admittedly, such documents were made available to the petitioners only on 05.04.2016. Thus, the afore first opportunity cannot be considered to be an 'effective' opportunity.

In the above peculiar facts and in line with the principles of natural justice as also not to preclude the petitioners from raising their defence at the very initial stage of the trial, after setting aside the impugned

order, the petitioners are granted one and only one opportunity to file their written statement. The same be filed within two weeks from today.

Since the respondent had filed the suit in December 2015 and after the passing of the present order, it would still be at the stage of completion of pleadings, it is directed that after filing of the written statement by the petitioners within 15 days from today, the respondent shall be granted one week's time to file replication. Thereafter, both sides shall be granted three effective opportunities each to lead their respective evidence. It is further directed that the Trial Court shall dispose of the respondent's suit, in accordance with law, within a period of six months from today.

The present petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 13, 2018

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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No