

CR No. 3018 of 2018

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

**CR No. 3018 of 2018
Date of decision: 7.5.2018**

Ghanshyam Goyal

... Petitioner

Versus

Arunesh Aggarwal and others

... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Petitioner in person.

ARUN PALLI, J. (Oral)

Defendant No. 3 is in revision before this Court against the order dated 12.4.2018, passed by the Civil Judge (Junior Division), Chandigarh, vide which, though his application seeking recalling of the order dated 3.7.2017, was allowed, but subject to payment of ₹5,000/-.

Concededly, defendants No.1 to 3 had moved an application under Order VII Rule 11 of the Code of Civil Procedure, for rejection of the plaint, which was still pending, and in the meanwhile, their defence was struck off by the trial court for not filing the written statement. Which is why, the defendants moved an application seeking recalling of the order dated 3.7.2017. And, on a consideration of the matter in issue, the trial court passed the following order:

“Heard upon the application for recalling the order dated 03.07.2017. Today, counsel for the plaintiff submitted no objection at bar, if the application is allowed. On the perusal of the order dated 03.07.2017, it is adduced that the

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defence of defendant No.1 to No.3 has been struck off mentioning that written statement has not been filed, despite last and final opportunity. However, on 23.05.2017, consideration on application under Order VII Rule 11 CPC, 1908, has been overlooked and the case was fixed for filing of the written statement without deciding the application under Order VII Rule 11 CPC, 1908. The striking off defence appears to have been due to inadvertence. As such, relying upon the principles of inherent powers provided under Section 151 CPC, 1908, for passing an order, which is just for the proper adjudication of the case, the application, so filed by the defendant, is hereby allowed and the order for striking off the defence is recalled, being passed due to oversight. The present application in hand stands allowed subject to payment of cost of Rs. 5,000/- is imposed upon defendant No.1 to No.3 to be paid to the plaintiff and it is further made clear to the counsel for the defendants that only one opportunity will be given to them for filing the written statement.”

The limited grievance that the petitioner has is; that once it was concluded that defence of defendants No.1 to 3 was struck off due to oversight, and their prayer for recalling of the order dated 3.7.2017 was not even opposed by the counsel for the plaintiff, there could be no occasion, least plausible, to still burden defendants No.1 to 3 with costs. Ex facie, to an extent indicated above, the impugned order is erroneous. Thus, the same is accordingly set aside, without issuing any formal notice to the respondent-

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plaintiff. For that would rather delay the matter further, and result in multiplicity of litigation. And, not just that, the plaintiff shall also have to incur an avoidable expense to defend these proceedings.

Accordingly, the order dated 12.4.2018 is set aside, to the extent indicated above, and the petition is disposed of. In the event, the plaintiff would still have any grievance against this order, he shall be at liberty to move an appropriate application in the matter at hands.

7.5.2018

AK Sharma

Whether speaking / reasoned:

Whether Reportable:

(ARUN PALLI)

JUDGE

YES

NO