

(110) IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.4589 of 2018

Date of decision: 16.08.2018

Ramphal and another

... Petitioners

Versus

Om Pal and others

.... Respondents

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

Present: Mr. Narender Pal Bhardwaj, Advocate for the petitioners.
Mr. Munish Kumar Garg, Advocate for respondent No.1.
Mr. Balkar Singh, Advocate for respondent Nos.2 & 3.

B.S. Walia, J. (Oral)

[1] Mr. Munish Kumar Garg, Advocate has put in appearance on behalf of contesting respondent No.1 and has filed his power of attorney while Mr. Balkar Singh, Advocate has put in appearance on behalf of proforma respondent Nos.2 and 3 and has filed his memo of appearance. The same are taken on record.

[2] Learned counsel appearing for contesting respondent No.1 states that although numbers of opportunities were availed by the petitioners/defendants to file written statement eventually leading to passing of order striking off defence, yet he has no objection if one opportunity is granted to the petitioners to file written statement to the amended plaint subject to payment of costs.

[3] Brief facts of the case leading to the filing of the instant revision petition are that initially civil suit was filed by respondent

No.1/plaintiff for permanent injunction for restraining the petitioners/defendants from selling his agricultural land. The aforementioned civil suit was subsequently amended so as to convert it into a suit for possession by way of a specific performance. Amendment prayed for was allowed vide order dated 17.03.2016. Thereafter, numbers of opportunities were granted for filing of written statement to the amended plaint but due to non-filing of the written statement to the amended plaint despite grant of number of opportunities, order dated 12.05.2018 was passed striking off the defence of the petitioners/defendants.

[4] Stand of learned counsel for the petitioners/defendants is that the petitioners/defendants are illiterate persons and had requested their counsel to file the written statement and on learning that their counsel had not filed the written statement leading to passing of the impugned order, they had changed their counsel.

[5] The aforementioned aspect of the matter has not been controverted by learned counsel for respondent No.1/plaintiff.

[6] In the light of the position as noted above as also the fact that the provision of Order 8 Rule 10 CPC have been held to be directory in **Shaik Salim Haji Abdul Khayamsab v. Kumar and others**, 2005 (4) RCR (Civil) 823; 2006 (1) SCC 46, as also in view of the fact that a person cannot be penalized for the fault of counsel representing him who admittedly in the instant case has been changed by the petitioners/defendants, I deem it appropriate to allow the instant revision petition by setting aside the impugned order dated 17.05.2018 passed by the learned Civil Judge (Jr. Div.), Sonapat. The petitioners/defendants

are granted one opportunity to file written statement to the amended
plaint on or before the next date i.e. 30.08.2018 subject to payment of ₹
5000/- as costs. It is made clear that payment of costs of ₹ 5000/- to
respondent No.1/plaintiff is a condition precedent to being allowed to file
written statement to the amended plaint and in case either the costs are
not paid or the written statement is not filed to the amended plaint by the
next date, then in that eventuality, no further opportunity shall be granted.
[7] Accordingly, the revision petition is allowed in the
aforementioned terms.

(B.S. Walia)
Judge

16.08.2018
amit

1. Whether speaking/reasoned : Yes/No.
2. Whether reportable : Yes/No