

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 102

Case No. : C. R. No. 5039 of 2017

Date of Decision : December 05, 2018

Gurmeet Singh .... Petitioner

vs.

Kulwant Singh and others .... Respondents

**CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.**

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Present : Mr. C. B. Goel, Advocate  
for the petitioner.

Mr. Sudhir Rana, Advocate  
for the respondents.

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**DEEPAK SIBAL, J. (Oral) :**

The present petition is directed against the order dated 07.07.2017 passed by the Additional Civil Judge (Senior Division), Assandh (for short – the trial court), through which the petitioner, though was allowed to cross-examine the witnesses of the plaintiffs, he was not permitted to file written statement.

The brief facts, as culled out from the record, are that in a declaratory suit with consequential relief of permanent injunction preferred by respondents no. 1 to 7, the petitioner, who was defendant no.3 in the suit, on 10.01.2017, was ordered to be proceeded against ex-parte. Thereafter, the petitioner filed an application seeking setting aside of the ex-parte order

and permission to contest the suit on merits. On being put to notice of the

application, respondents no. 1 to 7/plaintiffs appeared before the trial court through counsel and submitted that they had no objection if the application filed by the petitioner was allowed. The trial court, though allowed the petitioner to cross-examine the witnesses of the plaintiffs, did not permit him to file written statement. It is that order of the trial court, which is the subject matter of challenge in the present proceedings.

Learned counsel for the petitioner submits that once respondents no. 1 to 7/plaintiffs had expressed no objection to the petitioner joining the proceedings and the trial court had permitted the petitioner to cross-examine the witnesses of the plaintiffs, there was no reason for the trial court not to permit the petitioner to file the written statement as without pleading his case, no effective defence would be put up by the petitioner.

Learned counsel for respondents no. 1 to 7 says that he has no objection if the prayer made by the petitioner is accepted.

It is true that the suit has been pending before the trial court for over four years. However, once the trial court had set aside the ex-parte proceedings against the petitioner and permitted the petitioner to join the proceedings, the trial court should have also permitted the petitioner to file the written statement as without the same, no meaningful or effective defence can be raised by him especially when the respondents no. 1 to 7/plaintiffs had expressed no objection if the petitioner's prayer is accepted.

In view of the above, the impugned order is set aside and the petitioner is allowed to join the proceedings from the stage he was proceeded against ex-parte. It is clarified that the petitioner shall be

allowed to file his written statement within ten days from today and after framing issues, respondents no. 1 to 7/plaintiffs as also the defendants in the suit shall be granted three effective opportunities each to lead their entire evidence. The trial court shall finally adjudicate upon the suit within six months from today.

The present petition stands allowed in the above terms.

( DEEPAK SIBAL )  
JUDGE

December 05, 2018

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| <i>Whether speaking/reasoned ?</i> | <i>Yes.</i> |
| <i>Whether reportable ?</i>        | <i>No.</i>  |