

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.5667 of 2016

Date of Decision : 29.05.2018

Raghubir Singh and another

.....Petitioners

Versus

Sunil Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE ARUN PALLI

Present: Mr. Vivek Suri, Advocate for the petitioners.
Mr. H.K.Brinda, Advocate for respondent No.1.

ARUN PALLI, J. (Oral)

The petitioners are partially aggrieved by an order dated 4.5.2016, rendered by the Additional Civil Judge, (Sr. Divn.) Kharar, vide which, their application to set aside the order dated 10.09.2013, whereby they were proceeded against ex parte in the suit, though, has been accepted but they have been made to join the proceedings from the date of the order itself.

In a suit filed by the respondent/plaintiff, he has prayed for a decree for specific performance of the agreement dated 28.02.2011, that has allegedly been executed by defendant No.1, in his favour, on payment of Rs.1,00,000/- as earnest money. Validity of the sale deed dated 11.03.2011, has also been questioned, as defendant No.2, who happens to be the brother of defendant No.1, and also her attorney, has since sold the suit property in favour of his son i.e. defendant No.3. *Ex facie*, the right and interest of defendants No.2 and 3, is also involved in the lis, and they too are entitled

to set up their respective defence, as admissible in law. Therefore, to avert any miscarriage of justice, in the proceedings at a subsequent stage, the trial Court ought to have granted an opportunity to the petitioners to file their written statement(s), if any. But, the fact that can also not be lost sight of is, the suit was instituted in the year 2012, and nearly 6 years have gone by, but the matter is still at the stage of recording plaintiff's evidence. Still further, the petitioners had moved an application on 5.4.2016, i.e. nearly 3 years after the passing of the order dated 10.09.2013, whereby they were proceeded against ex parte. In the circumstances, the petitioners shall only be granted one opportunity to file their written statement(s), on the date that shall be specified by the trial Court, subject, however, to a cost of Rs.10,000/-, that shall be in addition to the cost already awarded by the trial Court vide order under challenge. And, in the event of default, their defence shall be deemed to have been struck-off, and they shall not be granted any further opportunity. This Court is sanguine that the trial Court shall, owing to the long pendency of the suit, make every endeavour to decide the same as expeditious as possible, preferably within a period of 6 months from today.

The revision petition is accordingly allowed. The impugned order dated 4.5.2016, is modified, in the above terms.

29.05.2018

Manoj Bhutani

(ARUN PALLI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No