

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 5641 of 2018

Date of Decision: 09.10.2018

Rajinder Kumar

.....Petitioner

Vs.

Sushma Devi and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Bikramjit Singh Randhawa, Advocate,
for the petitioner.

AMOL RATTAN SINGH, J. (ORAL)

By this petition, the petitioner challenges the order of the learned trial Court [Civil Judge (Junior Division), Sri Anandpur Sahib] dated 03.07.2018, by which it was ordered that all the defendants as had not filed a written statement (i.e. other than defendant no. 12 before that Court) may file their written statements by the next date of hearing at that stage, i.e. 25.07.2018, subject to payment of costs of Rs. 500/-, to be paid to the District Legal Services Authority.

As already noticed by this Court, vide its order dated 05.09.2018, there is no time of 30 days stipulated in Order VIII Rule 1 CPC, as applicable to the States of Punjab, Haryana and U.T., Chandigarh, which reads as follows:-

“Punjab, Haryana and Chandigarh--(1) The defendant may, and if so required by the Court, shall at or before the first hearing or within such time as the Court may permit, present a written statement of his defence, in duplicate, one for the Court and the other for the plaintiff; and with such written statement, or if there is no written statement, at the first hearing,

shall produce in Court all documents in his possession or power on which he bases his defence or any claim for set off.

(2) Where he relies on any other documents as evidence in support of his defence or claim for set off, he shall enter such documents in a list to be added or annexed to the written statement or where there is no written statement, to be presented at the first hearing. If no such list is so annexed or presented, the defendant shall be allowed a further period often days to file this list of documents.

(3) A document which ought to be entered in the list referred to in sub-clause (2) but which has not been so entered, shall not, without the leave of the Court, be received in evidence on the defendant's behalf at the hearing of the suit.

(4) Nothing in this rule shall apply to documents produced for cross-examination of plaintiffs witness or handed to a witness merely to refresh his memory.”

Though of course Order V Rule 1 CPC still does stipulate a time of 30 days extendable to a maximum time of 90 days, obviously there is an anomaly between the two provisions and generally this Court has been interpreting it liberally in favour of defendants, allowing them to file their written statement beyond the period of 90 days, subject to payment of costs, depending upon the delay caused by them.

That being so, and the application filed by the petitioner herein, i.e. the plaintiff before the trial Court, seeking that defence of the defendants be struck off, with them being debarred from filing a written statement, also being an application contending that Order VIII Rule 1 of the CPC stipulates a time of 30 days, which is not so as already seen hereinabove, I see no reason to interfere with the impugned order, to the extent that it allows the defendants to file their written statement. However, in my opinion, learned counsel for the petitioner having produced in Court today an order dated 29.03.2017, passed by the trial Court,

showing that the defendants had put in appearance before that Court on 29.03.2017, i.e. one year and about 03 months prior to the impugned order being passed, costs should be imposed upon the defendants for delaying the filing of the written statement for such a long time.

Consequently, even without issuing notice in this petition, it is disposed of with a direction that the written statements of all the defendants, as had not been filed on the date that the order dated 03.07.2018 had been passed, would be accepted, with them to be allowed to defend the case from now on, only upon payment of costs of Rs. 2,000/- each to the petitioner-plaintiff.

However, this order having been passed without issuing any notice to the respondents-defendants, if they are aggrieved of the order for any valid reason, they would be at liberty to file an appropriate application before this Court.

October 09, 2018
nitin

(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
Yes