

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

CR-5933-2017

Date of decision: 12.10.2018

Kanwal Singh

.... Petitioner

Versus

Manjeet & anr.

.... Respondents

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

Present: Mr. P.K.Parmar, Advocate
for the petitioner.

Mr. Gorav Kathuria, Advocate and
Ms. Kiranjeet Kaur, Advocate
for the respondents.

B.S.Walia, J.(Oral)

1. Challenge in the revision petition is to order dated 06.01.2017 (Annexure P-1) passed by the learned Addl. Civil Judge (Sr. Division), Bahardurgarh striking off the defence of the petitioner-defendant on account of failure of the petitioner to file written statement as well as reply to the injunction application.

2. Plaintiffs-respondents herein are the sons of the petitioner and had filed a suit for permanent injunction for restraining the petitioner from alienating/transferring or relinquishing by a Court decree his recorded share in the jamabandi as described in para No.2A to 2J of the plaint except with the consent of the co-parceners, plaintiffs etc.

3. Learned counsel for the petitioner states that complete papers were furnished by the petitioner to the counsel engaged for filing the written statement and he had assured the petitioner that the needful would be done but for reasons best known to the counsel representing the petitioner before

the trial Court, the written statement was neither prepared nor filed nor was the petitioner informed of the order imposing the costs. Learned counsel contends that in the circumstances, sufficient cause is made out to enable the petitioner to seek modification/recall of the order as well as enlargement of time under Section 151 read with Section 148 CPC in view of decision of Hon'ble the Supreme Court in *Salem Advocate Bar Association, Tamil Nadu vs. Union of India, 2005 AIR (SC) 3353* as well as the decision of this Court in *Municipal Committee Kharkhoda vs. Bhim Singh, 1987(1) RCR (Rent) 442*.

4. Whatever circumstances led to the non-filing of the reply and failure to pay costs on the date fixed, were not brought to the notice of the learned Additional Civil Judge (Sr. Division), Bahadurgarh by moving an appropriate application and satisfying the Court that there was sufficient cause for not filing the reply as well as for not paying the costs. Instead, the petitioner has straightway invoked the jurisdiction of this Court without moving an application before the learned Additional Civil Judge (Sr. Division), Bahadurgarh for recall of the impugned order and for extension of time for doing the needful by satisfying the learned Additional Civil Judge (Sr. Division), Bahadurgarh that the petitioner was prevented by sufficient cause from doing the needful on the date of the passing of the impugned order.

5. Learned counsel states that he does not press the instant revision petition and would withdraw the same with liberty to file an appropriate application before the learned Additional Civil Judge (Sr. Division), Bahadurgarh. Learned counsel however states that the matter is listed before the learned Additional Civil Judge (Sr. Division), Bahadurgarh

on 19.10.2018, therefore some time be granted to the petitioner to move an application with a further prayer that till such time that decision is taken on the application, protection be granted to the petitioner.

6. Per contra learned counsel for the respondents contends that adequate time had been availed by the petitioner and that he should have been vigilant to ensure filing of the written statement.

7. I have considered the submissions of learned counsel for the parties. Taking into account all aspects of the matter including the decision of Hon'ble the Supreme Court in *Saleem Advocate Bar Association Tamilnadu's case (Supra)* as well as decision of this Court in *MC Kharkhoda's case (Supra)*, the revision petition is disposed of by relegating the petitioner to avail the remedy of moving an appropriate application before the learned Additional Civil Judge (Sr. Division), Bahadurgarh, within a period of 07 days from the date of receipt of certified copy of this order. In case any such application is moved, within the time as stipulated above, the learned Additional Civil Judge (Sr. Division), Bahadurgarh will consider and decide the same in accordance with law, as expeditiously as possible, preferably within a period of two weeks thereafter and till such time, decision is taken on the application, further proceedings before the learned Additional Civil Judge (Sr. Division), Bahadurgarh listed for 19.10.2018, shall remain in abeyance.

8. Revision petition disposed of in above terms.

12.10.2018
sonia

(B.S.WALIA)
JUDGE

Whether speaking/non-speaking?	Yes/No
Whether reportable?	Yes/No