

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

125

CR No.6260 of 2017 (O & M)
Date of Decision:16.03.2018

Hatam Singh and others

...Petitioners

Versus

Kanwar Singh and others

...Respondents

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Ashok Kaushik, Advocate
for the petitioners.

ANIL KSHETARPAL, J.(Oral)

CM No.19563-CII-2017

Application is allowed.

Legal heirs of plaintiff No.2-petitioner are brought on record for the purpose of prosecuting this revision petition only.

Main Case

The plaintiffs-petitioners are in the revision petition against the order passed by the learned trial Court refusing permission to the plaintiffs to file reply to the counter claim filed by the defendants on the ground that the same has become time barred.

Learned counsel for the petitioners has drawn attention of the Court to the order dated 16.12.2016 wherein it was recorded that power of attorney has been filed on behalf of defendants No.3 and 11 and the case was adjourned to 01.02.2017 for filing written statement on behalf of appearing defendants. On 01.02.2017, separate written statement on behalf of defendants No.3 and 11 was not filed and learned counsel for the defendant suffered a statement that he adopts the written statement already filed by defendants No.2 to 6, 8, 10 and 11 and the case was adjourned for settlement of the issues. He

has further drawn attention of the Court to the order dated 21.04.2017, wherein

the plaintiffs filed an application for permission to file reply to the counter claim, which was ordered to be dismissed vide order dated 16.08.2017, challenged in this Court.

Notice of motion was issued. Service is complete. However, respondents have not chosen to appear.

Taking into consideration the facts, which have been noticed, it is apparent that the plaintiffs were waiting for the written statement on behalf of defendants No.3 and 11. Once learned counsel for defendants No.3 and 11 suffered a statement, the learned trial Court rather than giving opportunity to the plaintiffs to file reply to the counter claim, fixed the case for settlement of the issues. Plaintiffs filed an application. However, the same has been dismissed. Counter claim is to be treated as a separate suit, although, to be tried along with the main suit. However, in case no reply is filed to the counter claim, the pleadings in the counter claim would be treated to have been admitted.

In the present case, the Court without appreciating the consequences of the order passed declining the prayer for filing reply to the counter claim has passed the order.

In the considered opinion of this Court, the order passed by the learned trial Court deserves to be set aside. Plaintiffs/petitioners are granted one opportunity to file reply to the counter claim within a period of 15 days from the date of receipt of certified copy of the order. This opportunity shall be subject to the payment of cost of Rs.2,000/-.

Revision petition is allowed.

16.03.2018
sheetal

(ANIL KSHETARPAL)
JUDGE

Whether Speaking/Reasoned: Yes/No
Whether Reportable : Yes/No