

222.

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

CIVIL REVISION-7439-2016 (O&M)

Date of decision:16.04.2018.

PUNJAB STATE POWER CORPORATION LTD & ORS ... Petitioners

Versus

VIJAY KUMAR CHADHA

.... Respondent

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Jaswinder Singh Randhawa, Advocate,
for the petitioners.

None for the respondent.

HARI PAL VERMA, J.(Oral)

Petitioners have filed the present revision petition under Article 227 of the Constitution of India for setting aside the order dated 14.07.2016 (Annexure P-1) passed by learned Civil Judge (Junior Division), Jalandhar whereby for not filing the written statement within the statutory period of 90 days, the defence of the petitioner-defendants was struck off and the case was fixed for ex-parte evidence of the plaintiff.

Learned counsel for the petitioners-defendants has argued that the respondent-plaintiff has filed a suit for mandatory injunction directing the defendants to pay the interest w.e.f. 01.08.2000 to 27.01.2013 @ 18 % per annum on an amount of ₹73,108/- and ₹2,708/- illegally withheld by the defendants. He has further argued that the suit was filed on 22.12.2015, for which, notice of appearance was issued to the petitioner-defendants for 04.03.2016. Accordingly, defendants appeared on 04.03.2016 and thereafter,

the case was adjourned to 05.07.2016 for filing of the written statement which was further adjourned to 16.07.2016 as last opportunity for filing the written statement. Accordingly, the parties noted the date as 16.07.2016 for filing the written statement though subject to last opportunity to the defendant to file the written statement. However, on 16.07.2016 when the counsel for the defendants had gone to the court for filing the written statement, he found that the case was not listed in the cause list for 16.07.2016. However, on scrutiny, it transpired that the case was listed on 14.07.2016 instead of 16.07.2016 and on that date, the defence of the petitioner-defendants was struck off due to non-filing of written statement. He has further argued that there was no mala fide on the part of the petitioner-defendants as they had noted the next date for filing the written statement as 16.07.2016. He states that in fact the written statement was ready for filing even on 13.07.2016 and could have been filed on 14.07.2016 had it been in the knowledge of the petitioner-defendants that the case is fixed for 14.07.2016.

No one has put in appearance on behalf of the respondent despite service through his wife.

I have heard learned counsel for the petitioners.

Since the averments made in the petition have not been controverted by the respondent as he has not opted to appear despite service, this Court has no other option except to allow the present petition while drawing adverse inference. Even otherwise as per the petitioners, the case was fixed for 16.07.2016, but the case was taken up by the trial Court on 14.07.2016. Even on 14.07.2016, the party was ready with the written statement which has been attached with the present paper book as Annexures

P-7 and P-8. Therefore, the bona fide on the part of the petitioners cannot be doubted regarding noting the next date before the trial Court as 16.07.2016 instead of 14.07.2016. Even otherwise, it has been informed that after passing of the impugned order on 14.07.2016, no effective proceedings have taken place and the case is at the same stage where it was left.

Accordingly, the impugned order is set aside and the petitioners are afforded one opportunity to file the written statement.

Disposed of.

(HARI PAL VERMA)
JUDGE

16.04.2018
sanjeev

Whether speaking/reasoned?	Yes/No
Whether reportable?	Yes/No