

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.73 of 2019 (O&M)
Date of Order: 10.01.2019

Ashwani Kumar Grover

..Petitioner

Versus

Kiran Grover

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Ms. Swati Verma, Advocate,
for the petitioner.

ANIL KSHETARPAL, J(Oral)

Defendant no.1-petitioner is aggrieved of order passed by learned trial court dated 22.10.2018, striking of defence of defendants no.1 to 3 on account of non-filing of written statement in spite of last opportunity and non payment of costs.

Learned counsel for the petitioner has contended that defendants no.1 to 3 were proceeded against ex-parte, which was set aside only on 18.09.2018, subject to payment of costs of Rs.500/- The case was adjourned to 26.09.2018 for filing written statement and payment of costs. She has submitted that the plaintiff wanted to withdraw the suit and therefore under the bonafide belief defendants did not file the written statement. She further drew attention of the court to the order passed on 22.10.2018 by the trial court before lunch sessions which is extracted as under:-

“Plaintiff suffered a statement that he wants to withdraw

the suit on a condition of revival. The statement stands discarded, as the suit cannot be dismissed subject to revival at the desire of plaintiff. The plaintiff has not sought any permission to file fresh suit rather he sought condition of revival, which is not legally tenable, hence, the statement stands discarded.

W.S. not filed. Cost of Rs.1500/- not paid. An application has been filed for adjournment of the case along with an application for production of documents. Copu supplied. It be fixed for maintainability for post lunch.”

On careful reading of the aforesaid order, it is apparent that the plaintiff did want to withdraw the suit on a condition of revival which was rejected by the court. In such circumstances, learned counsel has contended that the defendants who were in bonafide belief that the suit would be withdrawn, cannot be punished and the impugned order is harsh.

Keeping in view the contention of the learned counsel for the defendant-petitioner, the order dated 22.10.2018 passed during post lunch session striking of the defence is set aside. Defendants are granted one opportunity to file written statement subject to payment of costs of Rs.3000/-. The written statement be filed on the next date of hearing i.e. 25.01.2019. If the written statement is filed and the costs is tendered on the date already fixed, the order would be deemed to have been set aside.

Since, this order has been passed without issuing any notice, therefore, liberty is granted to the plaintiff to move an application for recall/modification, if required.

Civil revision stands disposed of.

January 10, 2019
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(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No