

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

Sr. No.222

CR No.3001 of 2017

Date of decision: 18.09.2019

Binder Kaur

....Petitioner

versus

Ravinderpreet Singh and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mrs. Himani Kapila, Advocate
for the petitioner.

Mr. A.P.S. Srawaan, Advocate
for respondent No.1.

Ms. Anuradha Gupta, Advocate
for respondent No.2.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 13.10.2016 passed by the Additional Civil Judge (Senior Division), Ferozepur, (for short – the Trial Court) through which the petitioner's defence was struck off. Also under challenge is the order dated 07.02.2017 passed by the Trial Court through which an application filed by the petitioner seeking therein review of the aforesaid order of the Trial Court dated 13.10.2016 has been dismissed.

On 26.04.2016, respondent No.1 filed a suit seeking therein specific performance of agreement to sell dated 19.06.2014 allegedly executed by the petitioner and respondent No.1. On being put to notice, the petitioner, who was defendant No.1 in the suit, appeared before the Trial

Court on 28.07.2016 but thereafter, since the petitioner did not file her written statement and absented from the Court proceedings, on 13.10.2016, the Trial Court struck off her defence. On 16.11.2016, the petitioner filed an application seeking review of the aforesaid order of the Trial Court dated 13.10.2016 which was dismissed. The aforesaid orders of the Trial Court dated 13.10.2016 and 07.02.2017 are the subject matter of challenge in the present petition.

Learned counsel for the petitioner submitted that on being put to notice of respondent No.1's suit, the petitioner had put in appearance before the Trial Court on 28.07.2016 but thereafter, on 29.08.2016, the petitioner's daughter-in-law lodged a FIR under Section 498-A IPC against the petitioner and her son in which she could secure bail only on 25.10.2016. Therefore, for the above period, the petitioner could neither appear before the Trial Court nor could contact her counsel and meanwhile on 13.10.2016 the Trial Court ordered her defence to be struck off. In just about a month of the passing of the aforesaid order dated 13.10.2016 and about three weeks after securing bail in the afore-referred FIR, on 16.11.2016, the petitioner filed an application before the Trial Court to review its order dated 13.10.2016 but the same was wrongly dismissed.

Learned counsel for respondent No.1 submits that the defence of the petitioner was ordered to be struck off after grant of numerous opportunities to the petitioner to file her written statement and only when she did not avail of such opportunities, the Trial Court rightly ordered to strike off her defence.

It is not disputed that on being put to notice of respondent No.1's suit, the petitioner had initially appeared before the Trial Court on

28.07.2016; on 29.08.2016, a FIR was lodged against the petitioner and her son under Section 498-A IPC; that the petitioner secured bail in the aforesaid FIR on 25.10.2016 and that in the meanwhile, on 13.10.2016, the Trial Court struck off the petitioner's defence. That being so, from the date of lodging of the FIR till the petitioner secured bail, it is quite understandable that the petitioner was busy in pursuing her remedy for grant of bail in a matrimonial dispute between her son and daughter-in-law and since it was between these dates that the Trial Court struck off the petitioner's defence, the same is found to lack justification.

In the light of the above and in line with the principles of natural justice as also for the reason that the petitioner may not be precluded from raising her defence at the threshold of the litigation that she is facing, subject to payment of ₹10,000/- as costs, to be paid by the petitioner to respondent No.1, the impugned order is set aside and the petitioner is granted one opportunity to file her written statement.

The Trial Court shall ensure that the awarded costs ordered to be paid by the petitioner to respondent No.1 are transferred to his bank account.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

September 18, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No