

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 237

CR-4183-2016

Date of decision : 30.01.2019

M/s MKL Publicity and another

..... Petitioners

VERSUS

M/s A. N. S. Construction Ltd.

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Sandeep Arora, Advocate, for the petitioner.

Mr. Rajan Bansal, Advocate, for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 02.03.2016, passed by the Civil Judge (Junior Division), Jalandhar, striking off the petitioners' defence for having not filed written statement within ninety days of having put in appearance.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that the respondent filed a suit seeking therein recovery of ₹10,06,744/- alongwith interest. On being put to notice, the petitioners, who were defendants in the suit, on 13.10.2015 appeared before the Trial Court and sought time for filing written statement. Thereafter, the matter was adjourned for 16.11.2015 and 22.12.2015 on which dates no written statement was filed by the petitioners. On the next date before the Trial Court i.e. 21.01.2016 the petitioners filed an application for the issuance of directions to the respondent/plaintiff to supply certain documents to enable the petitioners to file their written statement. That application was allowed on 30.01.2016 in pursuance of which the petitioners were supplied the requisite documents. Thereafter on the next date before

the Trial Court i.e. 06.02.2016 since the petitioners did not file their written statement, costs were imposed upon them. Consequently, through the impugned order dated 02.03.2016 the petitioners' defence was ordered to be struck off for having not filed the written statement.

Learned counsel for the parties have been heard.

The first date for filing of written statement by the petitioners was 16.11.2015 on which date as also on the next date before the Trial Court i.e. 22.12.2015 no written statement was filed by them as they did not have the requisite documents for filing of an effective written statement. On the next date before the Trial Court i.e. 21.01.2016 an application was filed by the petitioners seeking from the respondent/plaintiff to supply to them the requisite documents so that they could file their written statement, which documents were supply to them on 30.01.2016. It is true that after such documents had been supplied by the respondent to the petitioners on 30.01.2016 till 02.03.2016 i.e. for about two months or so the petitioners did not file their written statement nor did they deposit the awarded costs but such lapse on their part does not warrant the extreme and harsh step of striking off their defence.

In view of the above facts which are peculiar to the present case and in line with the principles of natural justice as also for the reason that the petitioners may not be precluded from bringing on record their written defence, after setting aside the impugned order and subject to payment of ₹50,000/- as costs, to be paid by the petitioners to the respondent, the petitioners are granted one week's time from today to file their written statement.

The exemplary costs of ₹50,000/- have been directed to be paid by the petitioners for the reason that in the present proceedings it took them about two years to serve the respondent and in the integrum the trial progressed and reached the evidence stage. Thus, resulting in wastage of Court's time as also putting to inconvenience the respondent and this was in addition to the lapse on their part for not having filed their written statement in time as also not depositing the costs awarded by the Trial Court.

The Trial Court is directed to expedite the hearing of the trial and complete the same within three months from the date of receipt of a certified copy of this order, of course, after giving adequate opportunities to both the parties to lead their respective evidence.

The present petition is allowed in the above terms.

30.01.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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