

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

**CR No.534 of 2019
Date of Decision : 08.04.2019**

Mohan Singh (now deceased) through his LR

Petitioner

Versus

Kartar Singh

Respondent

CORAM: HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present: Mr. Dheeraj Mahajan, Advocate
for the petitioner.

Mr. Rajeshwar Singh Thakur, Advocate
for the respondent.

AVNEESH JHINGAN, J (Oral)

Aggrieved of the order dated 06.08.2018 passed by Civil Judge (Junior Division), Gurdaspur [hereinafter referred to as 'the Civil Court'] striking off the defence of the petitioner/defendant [hereinafter referred to as 'petitioner'], the present Civil Revision Petition has been filed.

The brief facts of the case are that the respondent/ plaintiff [hereinafter referred to as 'respondent'] filed a suit for specific performance on the basis of agreement to sell dated 02.01.2015. It was pleaded that the sale consideration was agreed at ₹9,00,000/- and ₹6,00,000/- was paid as an earnest

money. The balance amount was to be paid on 30.04.2015. The agreement was entered into between the respondent and petitioner (now deceased). The suit was filed on 16.04.2016. The legal heir i.e. son of petitioner was impleaded as party to the suit and the notice was issued. The petitioner was taken in custody on 04.07.2017, in case relating to FIR No.187, dated 20.11.2016. Vide order dated 27.03.2018 of this Court, he was released on regular bail. Due to non-filing of the written statement, his defence was struck off vide impugned order.

Learned counsel for the petitioner contends that the LR of the petitioner was behind the bars and could not file written statement in time. There was also mis-communication with the counsel concerned and later on the counsel was changed. It was for these reasons that written statement could not be filed. He prays that one opportunity be provided to the petitioner to file written statement.

Learned counsel for the respondent argues that the written statement has not been filed intentionally to delay the matter. The respondent has adduced evidence and the matter is now fixed for cross-examination.

Considering the fact that the petitioner was behind bars for considerable time, it would not be appropriate that he be not provided with an opportunity to defend the suit. It would be relevant to note at this stage that by non-filing of written statement, the delay has been caused, which would be

prejudicial to the respondent. In order to balance the equities, the impugned order is set aside subject to payment of costs of ₹20,000/- to be paid to the respondent. The Civil Court shall provide one opportunity to the petitioner to file the written statement within three weeks from today.

The Civil Revision Petition is allowed.

[AVNEESH JHINGAN]
JUDGE

April 08, 2019
pankaj baweja

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| 1. Whether speaking/ reasoned | : | Yes |
| 2. Whether reportable | : | No |