

238 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No.6147 of 2018 (O&M)

Date of Decision:17.12.2019

STATE OF HARYANA AND ANOTHER

...Petitioners

Versus

RAM NIWAS

..Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Pankaj Mulwani, DAG, Haryana.

None for the respondent.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 09.04.2018 passed by the Civil Judge (Junior Division), Hisar (for short-the Trial Court) striking off the petitioners' defence.

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 compensation from the petitioners on account of harassment and humiliation etc.

On being put to notice, the petitioners appeared before the Trial Court on 08.12.2017 but did not file their written statement within the prescribed period of ninety days. Therefore, the Trial Court, through its order dated 09.04.2018, struck off their defence. Such order of the Trial Court is under challenge in the present proceedings.

Though notice of the present petition has been served upon the respondent, none appears on his behalf.

Learned State counsel has been heard.

On 25.09.2018, while issuing notice, this Court passed the following order:-

“By this petition the petitioners (State of Haryana and the Director General of Prisons, Haryana), impugn the order of the learned Civil Judge (Jr.Divn.), Hisar, dated 09.04.2018, by which the defence of the petitioners has been struck off, no written statement having been filed despite a last opportunity granted to them.

Learned State counsel has produced in Court today copies of the orders passed by the learned trial Court prior to the date of the impugned order and thereafter.

A perusal thereof shows that after notice in the suit of the respondent/plaintiff was issued on 16.10.2017, eventually the petitioners/defendants put in appearance before the trial Court on 08.12.2017 and sought time to file a written statement, with further time having been sought on four dates between 05.01.2018 and 07.03.2018, with even costs of Rs.200/- also not deposited, as were imposed by the trial Court, subject to which the written statement would be taken on file.

Hence, on 09.04.2018, the impugned order was passed.

Though otherwise this petition may have been allowed in limine by directing the petitioners to pay costs to the respondent/plaintiff subject to which the written statement could have been allowed to be filed, however, as per the subsequent orders passed by the trial Court between 26.04.2018 till 07.09.2018, it is seen that even a witness has been examined by the respondent/plaintiff, who is now to be cross-examined.

That being so, in my opinion this petition cannot be allowed in limine, but if the respondent is to be forced to come to this Court for the fault of the petitioners, they are bound to pay pre-litigation expenses to him.

Consequently, upon the petitioners depositing Rs.7,000/- as pre-litigation costs, let notice of motion be issued to the

respondent, returnable on 08.10.2018.

Dasti process only.”

The costs awarded through the afore-quoted order have been deposited by the State but since they were pre-litigation costs to be paid to the respondent for pursuing the present litigation, the same be refunded to the petitioners as in spite of service, the respondent has failed to pursue the present petition filed against him.

Learned State counsel submits that the petitioners could not filed the written statement within the prescribed period of 90 days on the ground that it took some time for the State to collect documents which were necessary to be gone into before drafting an effective written statement. Shortage of staff is also submitted as one of the reasons.

After considering the afore-submissions made by learned counsel for the petitioners and in line with the principles of natural justice as also not to preclude the petitioners from raising their defence at the threshold of the litigation which they are facing, subject to payment of ₹10,000/-as costs, to be paid by the petitioners to the respondent, the impugned order is set aside and the petitioners are permitted to file their written statement within ten days from today.

The Trial Court shall ensure that the costs ordered to be paid by the petitioners to the respondent are transferred to the respondent's bank account.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

December 17, 2019

Jyoti-Whether speaking/reasonedYes/NoWhether ReportableYes/No