

CR No.573 of 2019

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

CR No.573 of 2019
Date of Decision : 11.02.2019

Satbir Tanwar and others

...Petitioners

Versus

Bal Singh and others

....Respondents

CORAM : HON'BLE MR. JUSTICE B.S.WALIA

Present: Mr. Raj Kapoor Malik, Advocate for the petitioners.

Respondents ex parte vide order dated 07.02.2019.

B.S.WALIA, J. (Oral)

1. Despite service none has put in appearance on behalf of the respondents, accordingly, on 07.02.2019, they were proceeded ex parte and the case was ordered to be listed for hearing today.

2, Challenge in the revision petition under Article 227 of the Constitution of India is to order dated 10.09.2018, passed by the learned Addl. Civil Judge (Senior Division), Kaithal, vide which the defence of the petitioners/ defendant Nos.4 and 5 was struck off for not filing the written statement in civil suit No.47/2018 dated 15.03.2018, titled as 'Bal Singh etc. vs. Karambir Singh etc.

3. A perusal of the impugned order reveals that defence of the petitioners/defendant Nos.4 and 5 was struck off on the ground that petitioners/defendant Nos.4 and 5 had appeared on 23.05.2018 and 17.04.2018 respectively and despite availing several effective opportunities

had failed to file the written statement besides period of 90 days had already expired.

4. Learned counsel contends that although the period of 90 days had expired, yet the service of other defendants had to be effected and, therefore, at least one opportunity ought to have been granted to the petitioners/defendant Nos.4 and 5 even by imposing costs instead of striking off the defence. Learned counsel contends that in the absence of one opportunity being granted grave prejudice would be caused to the petitioners/ defendant Nos.4 and 5 as the claim of the respondents/plaintiff would go undefended. Learned counsel placed reliance on the decision of this Court in Sita Ram and others vs. Gurbax Singh and others 2014 (12) RCR (Civil) 2280. Relevant of the extract of the decision in Sita Ram's case (supra) is reproduced as under:-

“The case in hand is at the initial stage and some of the defendants are yet to be served. In view of this, this Court is of the considered opinion that ends of justice would be met if one effective opportunity is given to the petitioners-defendants no.8 to 17 to file written statement, subject to costs of ₹5000/- to be deposited with the District Legal Services Authority, Panchkula. Ordered accordingly. The petitioners are directed to file written statement on the date fixed before the trial Court.”

5. Even in the instant case, the civil suit is at the initial stage as defendant No.3 has been served only on 08.02.2019 and next date has been fixed as 16.02.2019 for filing of written statement by the other defendants. In the circumstances, I am of the considered view that ends of justice would be met, if one effective opportunity is granted to the petitioners/

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defendant Nos.4 and 5 to file the written statement subject to payment of costs of Rs.10,000/- to be deposited with the District Legal Services Authority, Kaithal.

6. The written statement be filed by the petitioners/ defendant Nos.4 and 5 on the date already fixed before the learned trial Court i.e. 16.02.2019.

7. Revision petition is allowed in the aforementioned terms.

(B.S.WALIA)
JUDGE

11.02.2019.
rajesh.k.khurana

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No