

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

CR No.7112 of 2018
Date of Decision: 19.03.2019.

Harinder Singh and another

...Petitioners

Versus

State Bank of Bikaner and Jaipur

....Respondent

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

Present: Mr. Sandesh Arora, Advocate for the petitioners.

Ms. Madhu Dayal, Advocate for the respondent.

B.S.WALIA, J (Oral).

1. Revision petition has been filed under Article 227 of the Constitution of India challenging order dated 13.07.2018 (Annexure P/8), passed by the learned Civil Judge (Junior Division), Ludhiana, whereby defence of the petitioner-defendant Nos.1 and 2 was struck off on account of failure to file written statement within the time stipulated under Order 5 Rule 1 Code of Civil Procedure (hereinafter referred to as 'CPC').

2. Brief facts of the case leading to the filing of the instant revision petition are that petitioner/defendant Nos.1 and 2 put in appearance through counsel before the learned trial Court on 05.03.2018, whereupon the case was fixed for 09.04.2018 for filing written statement. Thereafter, the case was fixed for 15.05.2018 for filing written statement and lastly the case was fixed for 13.07.2018 for filing written statement. However, in view of the written statement not having been filed within stipulated period of 90 days besides more than four months having elapsed

from the date the petitioner/defendants' had put appearance, defence of the petitioners/defendant Nos.1 and 2 was struck off on account of failure to file the written statement while observing that on the date of passing of the impugned order an application U/s 151 CPC was filed by the petitioners/defendant Nos.1 and 2 for directing the respondent/plaintiff to supply copy of the plaint along with documents relied upon in the plaint. The learned trial Court was of the view that the petitioners/defendant Nos.1 and 2 were making an attempt to get extended the time for filing of written statement but they could not be allowed to misuse the process of law as it was only after lapse of about four months that the petitioners/defendant Nos.1 and 2 had woken up from deep slumber and that they were in need of documents in order to prepare the written statement.

3. Sole argument of learned counsel for the petitioners is that as per mandate of Order 5 Rule 2 CPC, every summon is to be accompanied by a copy of the plaint along with documents relied upon in the plaint but in the instant case neither copy of the plaint was received nor the documents attached thereto were received along with the summons. Besides the endorsement on the summons nowhere mentioned that along with the summons, copy of plaint and documents were attached thereto or were supplied at the time of execution of the summons and as is evident from the report of the process server Annexure P/1 dated 19.02.2018, as per which only copy of summons was handed over to the mother-in-law of petitioner No.2 and mother of petitioner No.1. It is further the stand of the petitioners that they put in appearance on 05.03.2018 through counsel and a request was made for supply of copy of the plaint and documents attached

thereto and the said request was repeated on subsequent dates i.e. 09.04.2018 and 15.05.2018 but to no avail and it was in the aforementioned circumstances that an application U/s 151 CPC was filed on 13.07.2018 for furnishing of copy of the plaint and documents attached thereto in order to enable the petitioners to file the written statement. The learned trial Court dismissed the application on the date of its presentation even without issuing notice to the respondent/plaintiff and without even ascertaining as to whether the summons were served with copy of plaint and documents attached thereto. Civil suit is for the recovery of ₹2,14,730/- including interest @ 11.70% per annum with monthly rests calculated upto 01.02.2017 and future interest on the said rate by sale of moveable and immovable assets/properties of the petitioners/defendants on the basis of oral and documentary evidence.

4. To my kind, the provisions of Order 5 Rule 2 CPC make it incumbent that the summon be accompanied with a copy of the plaint and other documents at the time of service failing which the defendant would be unable to file the written statement. Hon'ble the Supreme Court in Nahar Enterprises vs. Hyderabad Allwyn Ltd. and another 2007 (9) SCC 466, was pleased to hold that when a summon is sent calling upon a defendant to appear in Court and file written statement, it is obligatory on the part of the Court to send a copy of the plaint and other documents appended thereto, in terms of Order 5, Rule 2 CPC. A perusal of the report of the process server Annexure P-1 dated 19.02.2018 reveals that only copy of summons was handed over and that too to the mother-in-law of petitioner No.2 and mother of petitioner No.1. In case the learned trial

Court was of the view that the application had been moved belatedly then subject to verification of the endorsement of the process server, some costs could have been imposed but it was obligatory on the part of the learned trial Court to have ensured that the copy of the plaint and other documents attached thereto had been supplied to the petitioners/defendant Nos.1 and 2 in order to enable them to file written statement, The same not having been done, the impugned order is legally unsustainable.

5. In view of the position as noted above, order dated 13.07.2018 (Annexure P/8) is set aside. In view of order dated 13.07.2018, striking off the defence of the petitioner/defendant Nos.1 and 2 having been set aside, the subsequent order dated 13.08.2018, allowing the application for amendment of the plaint without seeking reply is also set aside. Respondent/plaintiff is directed to supply copy of the plaint along with documents attached thereto as also copy of the application for amendment of plaint against acknowledgement, whereupon the petitioners/defendant Nos.1 and 2 would file the written statement to the original plaint and reply to the said application within four weeks and thereafter a fresh decision would be taken by the learned trial Court on the application under Order 6 Rule 17 CPC without being influenced in any way by this order.

6. Revision petition is allowed in the aforementioned terms.

(B.S.WALIA)
JUDGE

19.03.2019

rajesh.k.khurana

Whether speaking/reasoned

: Yes/No

Whether reportable

: Yes/No