

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Sr. No. 110

CR-7970-2018

Date of decision : 13.02.2019

Mohan Lal and others

..... Petitioners

VERSUS

Raj Sharma

..... Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Bhavdeep Singh Mamli, Advocate, for the petitioners.

DEEPAK SIBAL, J. (ORAL)

The present petition is directed against the order dated 26.10.2018, passed by the Civil Judge (Junior Division), Yamuna Nagar at Jagadhri (for short, the Trial Court), striking off the petitioners' defence on the ground that they had not filed the written statement within the mandatory period of ninety days of having putting in appearance before the Trial Court.

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 possession by way of partition by metes and bounds in respect of half share of her property detailed and described in the headnote of the plaint (for short, the suit property). Permanent injunction to restrain the petitioners/defendants from demolishing or changing the nature of the suit property was also sought.

On being put to notice, the petitioners, who were the defendants in the suit, appeared before the Trial Court on 01.04.2017 and thereafter the matter was adjourned thrice to enable the petitioners to file their written statement but they did not do so. On the third date i.e. 17.08.2017 the respondent filed an application under Order 8 Rule 1 CPC seeking therein an

order of the Trial Court to preclude the petitioners from filing their written statement as they had failed to do so within the mandatory period of ninety days. Such application was allowed on 26.10.2018 and resultantly, the petitioners' defence was struck off. Such order is under challenge in the present proceedings.

Learned counsel for the petitioners submits that after the petitioners had put in appearance before the Trial Court, on two occasions they could not file their written statement as the same was under preparation. However, on the third date i.e. 17.08.2017 since the respondent had filed an application under Order 8 Rule 1 CPC for striking off the petitioners' defence which application remained pending till 26.10.2018, they were precluded from filing their written statement. Thus, the delay in the filing of their written statement was on account of the pendency of the proceedings under Order 8 Rule 1 CPC initiated by the respondent and not on the petitioners' part.

Learned counsel for the petitioners has been heard.

The Trial Court adjourned the matter twice after the petitioners had put in appearance before the Trial Court enabling the petitioners to file their written statement but they did not do so. On the third date, an application was filed by the respondent under Order 8 Rule 1 CPC seeking an order from the Trial Court to strike off the petitioners' defence on the ground that they had not filed their written statement within the prescribed period of ninety days. Such application was allowed on 26.10.2018. During the time the aforesaid application filed by the respondent under Order 8 Rule 1 CPC was pending before the Trial Court nothing precluded the Trial Court

from accepting the petitioners' written statement after extending the time to do so for recorded reasons. However, no such order was passed by the Trial Court. Thus, it appears that the petitioners were under an impression, which was though a mistaken one, that during the pendency of the proceedings under Order 8 Rule 1 CPC they could not file their written statement.

In view of the above facts which are peculiar to this case and in line with the principles of natural justice as also not to preclude the petitioners from putting forth their defence at the threshold of the trial, subject to payment of ₹30,000/- as costs, to be paid by the petitioners to the respondent, after setting aside the impugned order, one opportunity is granted to the petitioners to file their written statement within ten days from today.

The present petition is allowed in the above terms.

If the respondent is aggrieved by this order, she is at liberty to approach this Court through an appropriate application.

13.02.2019
shamsher

[DEEPAK SIBAL]
JUDGE

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