

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

Sr. No.111

C.R. No.729 of 2019 (O&M)

Date of decision: 07.02.2019

Zora Singh

....Petitioner

versus

Sukhminder Singh

....Respondent

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Ms. Amanpreet Kaur, Advocate for
Mr. Deepinder Brar, Advocate
for the petitioner.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 25.09.2018 passed by the Civil Judge (Junior Division), Payal (for short – the Trial Court) striking off the petitioner's defence for the reason that the petitioner had not filed his written statement during the prescribed period of 90 days from the date he had put in appearance.

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 to recover from the petitioner a sum of ₹10,20,000/- alongwith future interest and also to restrain him from alienating/transferring the property detailed and described in the head note of the plaint (for short – the suit property). He had further sought to declare agreement to sell dated 18.02.2017 as null and void. On being put to notice, the petitioner appeared before the Trial Court on 11.05.2017 but thereafter, since he did not appear on the subsequent date i.e. 03.08.2017, he was

ordered to be proceeded ex parte. Thereafter, on 26.10.2017, the petitioner again appeared before the Trial Court and filed an application under Order 9 Rule 7 CPC seeking setting aside of the aforesaid ex parte order dated 03.08.2017 which was allowed by the Trial Court on 19.12.2017. Thereafter, the matter was adjourned thrice to enable the petitioner to file his written statement but he did not do so. On 21.03.2018, the petitioner filed an application under Order 7 Rule 11 CPC seeking rejection of the respondent's plaint. Such application was dismissed by the Trial Court on 01.08.2018. Even thereafter, the matter was adjourned twice for the petitioner to file his written statement. However, he did not do so. He also did not deposit the awarded costs. Resultantly, through order dated 25.09.2018, the petitioner's defence was struck off. Such order is under challenge in the present proceedings.

Learned counsel for the petitioner submits that the petitioner is suffering from heart and pulmonary ailments and for this reason as also because he was pursuing his legal remedies he could not file his written statement in time. It is submitted that there is some delay on the part of the petitioner in filing his written statement but for that the extreme and harsh step of striking off his defence should have not been taken by the Trial Court.

In a recovery suit filed by the respondent, the petitioner after putting in appearance absented himself for which he was ordered to be proceeded against ex parte. He then filed an application seeking to set aside the ex parte order against him which was allowed. Then he filed an application under Order 7 Rule 11 CPC seeking therein rejection of the respondent's plaint which was dismissed by the Trial Court. Thereafter, he

did not file his written statement in spite of adequate number of opportunities. He also did not deposit the costs awarded by the Trial Court.

There is a delay on the part of the petitioner in filing of his written statement. However, in the facts which are peculiar to the present case the extreme step of not permitting the petitioner to even raise his written defence at the initial stage of the trial is not warranted. This is because of his medical condition and the fact that he was availing his legal remedies before the Trial Court as also in line with the principles of natural justice so as not to preclude the petitioner from raising his written defence at the threshold of the litigation filed against him. Therefore, subject to payment of ₹40,000/- as costs, to be paid by the petitioner to the respondent, the impugned order is set aside and the petitioner is granted one week from today to file his written statement.

The petition is allowed in the above terms.

If the respondent is aggrieved by passing of the present order he is at liberty to approach this Court by filing of an appropriate application.

(DEEPAK SIBAL)
JUDGE

February 07, 2019

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