

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

113

CR-986-2019

Date of Decision: 11.02.2019

Guneet Kumar

... Petitioner

Vs.

Manphool Ram and another

... Respondents

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present:- Mr.A.K.Khunger, Advocate, for the petitioner.

Amol Rattan Singh, J (Oral)

By this petition, the petitioner challenges the order of the learned trial Court (Civil Judge, Junior Division), Fazilka, dated January 22, 2019, by which the written statement filed by the respondents in reply to the plaint in the suit of the petition/plaintiff has been taken on record, with the application filed by the petitioner under Order 8 Rule 10 CPC seeking that the defence of the respondents/defendants be struck off, disposed of by holding that it had been rendered infructuous in view of the written statement filed.

Mr. Khunger, at the outset, submitted that the written statement having been filed after the expiry of 90 days from the date notice was received by respondents/defendants, it could not have been filed even in terms of provision Rule 1 of Order 8 of the Code of Civil Procedure, 1908.

Upon this Court having pointed out to learned counsel that there is an amendment in the said provision as applicable to the states of Punjab and Haryana and the Union Territory of Chandigarh, he submits that by virtue of a 'Special Amendment' enacted vide Act 4 of 2016 w.e.f. 23.10.2015, a second proviso has been added to Rule 1, which reads as follows :-

“Provided that where the defendant fails to file the written statement within the said period of thirty days, he shall be allowed to file the written statement on such other day, as may be specified by the Court, for reasons to be recorded in writing and on payment of such costs as the Court deems fit, but which shall not be later than one hundred twenty days from the date of service of summons and on expiry of one hundred twenty days from the date of service of summons, the defendant shall forfeit the right to file the written statement and the Court shall not allow the written statement to be taken on record.”

He therefore submits that even 120 days having gone by after the respondent/defendant received notice of the suit, the impugned order could not have been passed, without even a reply having been filed by the respondents to the application of the petitioner under Order 8 Rule 10.

Having considered the aforesaid it is to be noticed that the suit instituted by the plaintiff against the respondents/defendants (copy Annexure P-1) is one seeking a declaration to the effect that a sale deed executed by the plaintiff in favour of respondent/defendant no.2 be declared to be null and void.

That being so, and it not having been shown to this Court that the (new) 2nd proviso added to Rule 1 of Order 8 is applicable to the case of the petitioner/plaintiff, in terms of the suit being one in the nature of a commercial dispute of a specified value, the said amendment naturally cannot come to the aid of the petitioner.

Having said that, this Court is of the opinion that most definitely, the written statement having been filed by the respondents/defendants in Court on 22.01.2019 and they having appeared before the trial Court initially on

04.07.2018, and thereafter adjournments having been granted to them to file the written statement which they did not do right uptill January this year, and that too after the petitioner had filed an application under Order 8 Rule 10 CPC, the written statement could not have been taken on record without imposition of appropriate costs upon the respondents, especially when they had filed no reply to the said application filed by petitioner/plaintiff, giving any valid reasons for the written statement being delayed unnecessarily.

However, as regards the contention that the defence should have been struck off despite the written statement having been presented on 22.01.2019, I do not agree with the learned counsel for the petitioner, as eventually it is the discretion of the Court, of course for good reasons, to grant time to the defendants to file their written statement, though, as said, no valid explanation is seen to have been given for unnecessarily delaying it. Therefore, it could have been taken on record only after imposing costs.

Consequently, even without calling upon the other side by issuing notice, in view of the fact that the application under order 8 Rule 10 CPC was not given any reply to explain the delay in filing the written statement, this petition is disposed of with a direction that though the impugned order would sustain as regards taking the written statement of the respondents on record, it would be subject to payment of costs of Rs.5,000/- by them by the next date of hearing before the trial Court, failing which their defence shall stand struck off.

(AMOL RATTAN SINGH)
JUDGE

11.02.2019
anju/dinesh

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