

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 1799 of 2019(O&M)

Date of Decision: 15.3.2019

Satwant Singh and others

---Petitioners

versus

Akashdeep Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr.K.P.S.Dhillon, Advocate
for the petitioners**

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 19.11.2018(Annexure P-1) passed by the Additional Civil Judge (Senior Division), Payal District Ludhiana whereby defence of the petitioners in an application under Order 39 Rule 2-A of the Code of Civil Procedure (in short “the Code”) has been struck off on account of their failure to file reply.

Counsel for the petitioners would argue that the application under Order 39 Rule 2-A read with Section 151 of the Code was registered for the first time on 27.11.2014 and remained pending for service of respondent No. 5 till 19.11.2018, the day the application was dismissed against respondent No. 5 under Order 9 Rule 2 of the Code and defence of the petitioners was struck off for want of filing of written statement/reply. It is further argued that though the petitioners had caused appearance at

different dates prior to 19.11.2018 but the case for the first time was posted for reply by the petitioners (respondents No. 1 to 4 therein) vide order dated 21.9.2018 and the case was adjourned to 19.11.2018. It is further argued that on 21.9.2018 itself, the court has made an order that reply on behalf of appearing respondents is to be filed for the date fixed subject to last opportunity meaning thereby that on the first date fixed for reply, last opportunity was provided. It is further submitted that a serious prejudice shall be caused to the petitioners in case they are not permitted to file reply and contest the proceedings for alleged violation of order of stay passed by the court, subject matter of application under Order 39 Rule 2-A read with Section 151 of the Code. It is prayed that the petitioners may be allowed one opportunity to file reply, may be, subject to payment of reasonable costs to compensate the other side.

Counsel for the petitioners has reproduced the zimni orders recorded by the court since 27.11.2014 till 21.9.2018 and placed on record certified copy of order dated 19.11.2018 vide which defence of the petitioners was struck off and application against respondent No. 5 was dismissed under Order 9 Rule 2 of the Code.

Perusal of zimni orders would bear testimony to contention raised by counsel that the court fixed the case for filing of reply by the petitioners for the first time on 21.9.2018 subject to last opportunity and on the very next date, defence was ordered to be struck off when the case was still pending for service of respondent No. 5. Taking into consideration the serious consequence of non-filing of reply by the petitioners coupled with the discussion made hereinbefore, it is expedient in the interest of justice

that the petitioners are allowed one opportunity to file reply, subject to costs of Rs. 5000/-, to be paid by way of demand draft in the name of respondent-applicant on the day, the reply is to be filed. The petitioners shall file the reply within a period of 15 days from today and copy in advance shall be supplied to counsel opposite with demand draft of Rs. 5000/- towards costs. Failure of the petitioners to comply with either of the aforesaid conditions would entail dismissal of the petition.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent in order to avoid inconvenience and incurring expenditure by him. However, if the respondent has any grievance to express, he shall be at liberty to file appropriate application before this Court.

(Rekha Mittal)
Judge

15.3.2019

PARAMJIT

Whether speaking/reasoned : Yes

Whether reportable : Yes/No