

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 117

Case No. : C. R. No. 1809 of 2019 (O&M)

Date of Decision : May 02, 2019

Major Singh Petitioner

vs.

Navneet Kaur @ Simranjeet Kaur
and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

* * *

Present : Mr. Arvind Kashyap, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 10.08.2017 passed by the Civil Judge (Junior Division) Amloh (for short – the Trial Court) striking off petitioner/defendant no.1's defence on the ground that in spite of having availed several opportunities, he had failed to file his written statement. Also under challenge is the order of the Trial Court dated 02.02.2019, through which an application filed by the petitioner seeking recalling of the aforesaid order dated 10.08.2017 has been dismissed.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that respondent no. 1 filed a suit seeking therein to be declared joint owner and having joint holding rights, equal to the petitioner and respondents no. 2 to 4 in the suit land.

Respondent no. 1 further sought a declaration that she got 1/9th share in the suit land of the estate of Tarsem Singh and Mukhtiar Kaur. Joint possession of 1/9th share in the suit land was also claimed. Permanent injunction to restrain the petitioner and respondents no. 2 to 4 as also their agents/servants from transferring, selling, mortgaging, exchanging, gifting, creating any charge, disposing of or alienating the suit land in any manner, without getting the same partitioned by metes and bounds, was also sought.

On being put to notice, the petitioner, who was defendant no. 1 in the suit, appeared before the Trial Court and when even after availing several opportunities, he did not file his written statement, through order dated 10.08.2017, the Trial Court struck off his defence. The petitioner then filed an application seeking review of the aforesaid order dated 10.08.2017, which was dismissed by the Trial Court on 02.02.2019 leading to the filing of the present petition for the afore-referred prayers.

Learned counsel for the petitioner submits that the petitioner could not file his written statement as the other defendants were yet to be served and that the relevant record for filing an effective written statement was being collected. He further prays that subject to assessment of reasonable costs, the petitioner be granted one effective opportunity to file his written statement.

After considering the above facts and taking a rather lenient view in the matter and in line with the principles of natural justice as also for the reason that the petitioner may not be precluded from raising his defence at the threshold of the litigation which he is facing, subject to

no. 1, the impugned order is set aside and the petitioner is granted 10 days time to file his written statement.

The record reveals that respondent no. 1 had filed her suit in March 2016 and till date, the pleadings have not been completed. In view of this fact, a direction is issued to the Trial Court to dispose of respondent no.1's suit within ten months from the date of receipt of a certified copy of this order in accordance with law.

The Trial Court shall ensure that the costs awarded through this order shall go into the account of respondent no. 1.

If respondent no.1 is aggrieved by the passing of the present order, she is at liberty to approach this Court by filing of an appropriate application.

(DEEPAK SIBAL)
JUDGE

May 02, 2019
monika

<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>