

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

Sr. No.261

CR-3810-2019 (O&M)

Date of decision: 15.07.2019

Vaisakhi Ram

....Petitioner

versus

Rajinder Kumar and another

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. Naveen Batra, Advocate
for the petitioner.

Mr. Arun Takhi, Advocate
for respondent No.1.

* * *

DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 18.05.2019 passed by the Civil Judge (Senior Division), Hoshiarpur (for short – Trial Court) through which the petitioner's defence has been ordered to be struck off for having not filed his written statement within the stipulated period of three months.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that respondent No.1 filed a suit seeking therein to be declared owner to the extent of 1/3rd share of the property detailed and described in the head note of the plaint. Partition qua his share was also sought. Such claim was made inter-alia on the basis of succession. On being put to notice, the petitioner, who was defendant No.1 in the suit, appeared before the Trial Court but when he did not file his written statement within 90 days, his defence was ordered to be struck off

by the Trial Court, through the order which is under challenge in the present proceedings.

Learned counsel for the petitioner submits that the petitioner could not file his written statement within the stipulated period of 90 days due to some miscommunication between himself and his co-defendant as also his counsel appearing for him before the Trial Court. He prays for grant of one opportunity to do the needful.

Learned counsel for respondent No.1 opposed the prayer made by learned counsel for the petitioner by submitting that effective opportunities had been granted to the petitioner to file his written statement but he failed to do so without any plausible reason.

After going through the submission made by learned counsel for the parties 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 that he faces, subject to payment of ₹15,000/- as costs, to be paid by the petitioner to respondent No.1, the impugned order is set aside and the petitioner is granted one week to file his written statement.

The Trial Court shall ensure that the awarded costs ordered to be paid by the petitioner to respondent No.1 are transferred to his bank account.

The petition is allowed in the above terms.

(DEEPAK SIBAL)
JUDGE

July 15, 2019
Jyoti 1

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No