

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 5690-2019(O&M)

Date of decision: 29.10.2019

T.S. Pandi (Tota Singh Pandi)

.....Petitioner

versus

Raj Hans Fertilizers Ltd. and others

.....Respondents

CORAM: Hon'ble Mr. Justice Deepak Sibal

Present: Dr. Rau P. S. Girwar, Advocate for the petitioner

Deepak Sibal, J. (Oral)

The present petition is directed against the order dated 18.07.2019 passed by the Civil Judge (Junior Division), Bathinda (for short, the Trial Court), dismissing an application filed by the petitioner under Order 8 Rule 1 CPC through which he had sought to strike off respondent nos. 1 and 2's defence.

The facts in brief which are required to be noticed for adjudicating upon the present petition are that the petitioner filed a suit for mandatory injunction for issuance of a direction to the respondents, who were the defendants in the suit, to pay to the petitioner his salary, allowances and other dues from 01.08.2015 to 31.12.2017 along with interest. A direction to the respondents/ defendants not to misuse the papers got signed by them from the petitioner under threat and coercion was also sought.

On being put to notice, the respondents failed to appear before the Trial Court and therefore were proceeded against ex-parte. They moved an application for setting aside ex-parte proceedings, which application was allowed on 21.08.2018. Thereafter on 25.02.2019 the respondents filed

their written statement as also their counter-claim. On the next date fixed before the Trial Court i.e. 26.03.2019, the petitioner filed an application under Order 8 Rule 1 CPC seeking therein a direction to strike off the respondents' defence on the ground that they had failed to file their written statement within 120 days from the date when ex-parte proceedings against them had been set aside as also for the reason that the Trial Court while accepting the respondents' written statement did not record any reasons. The Trial Court dismissed the petitioner's application through the order under challenge in the present proceedings.

Learned counsel for the petitioner submits that ex-parte proceedings against the respondents were set aside on 21.08.2018 and the respondents filed their written statement on 25.02.2019, which was well beyond the prescribed period of 120 days and that while accepting the written statement of the respondents the Trial Court did not record any reasons. Therefore, the Trial Court erred in rejecting the petitioner's application to strike off the respondents' defence.

While accepting the written statement beyond the prescribed period of 120 days the Trial Court should have recorded reasons. However, in the facts of the present case, the written statement by the respondents was filed on 25.02.2019 and perusal of the order passed by the Trial Court of that date reveals that the same was filed in the presence of the petitioner's counsel who did not raise any objection to the placing on record of the written statement-cum-counter claim filed by the respondents. In fact it was after over a month that the petitioner filed his application under Order 8 Rule 1 CPC for striking off the respondents' defence.

Once the respondents' written statement was permitted to be

placed on the record and at that time the petitioner raised no objection/protest as also for the reason the respondents' written statement was placed on record over six months ago and that the trial has thereafter proceeded, the present case is not considered a fit one for interference in revisionary jurisdiction.

Dismissed.

29.10.2019

gk

**(Deepak Sibal)
Judge**

Whether speaking/ reasoned:

Yes/No

Whether Reportable:

Yes/No