

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

Sr. No.118

CR No.6747 of 2019

Date of decision: 24.10.2019

Bohar Singh @ Gurmel Singh and another

....Petitioners

versus

Karnail Singh @ Surjit Singh and others

....Respondents

CORAM: HON'BLE MR. JUSTICE DEEPAK SIBAL

Present: Mr. G.S. Aulakh, Advocate
for the petitioners.

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DEEPAK SIBAL, J. (Oral)

The present petition is directed against the order dated 11.03.2019 passed by the Civil Judge (Junior Division), Gidderbaha, (for short – the Trial Court) striking off the petitioners' defence on the ground that the petitioners had not filed their written statement within the prescribed period of 90 days from the date they put in appearance. Order dated 26.09.2019 passed by the Trial Court is also under challenge through which an application filed by the petitioners under Section 151 CPC seeking therein permission of the Trial Court to file their written statement has been dismissed.

The facts, in brief, which are required to be noticed for adjudicating upon the present petition are that through his suit, respondent No.1 challenged the agreement Taksem Khangri dated 23.06.2017 and Rapt No.594 dated 10.07.2017 regarding land measuring 5 kanals and 16 marlas detailed and described in the head note of his plaint (for short – the suit

property). Permanent injunction to restrain respondent No.4-Lovepreet Kaur from alienating the suit property in any manner was also sought. On being put to notice, the petitioners, who were defendants No.1 and 3 appeared before the Trial Court on 26.07.2018 but when even after grant of several opportunities when they failed to file their written statement, through order dated 11.03.2019, the Trial Court struck off their defence. The petitioners then filed an application under Section 151 CPC seeking permission of the Trial Court to file their written statement which on 26.09.2019 has been dismissed by the Trial Court. Both orders of the Trial Court dated 11.03.2019 and 26.09.2019 are under challenge in the present proceedings.

Learned counsel for the petitioners submits that the petitioners could not file their written statement in time due to miscommunication between them and their counsel appearing for them before the Trial Court and that before the date of passing of the first impugned order dated 11.03.2019 their counsel met with an accident on 03.03.2019. Learned counsel for the petitioners prays that subject to reasonable costs, one opportunity be granted to the petitioners to file their written statement.

After considering the above submissions raised at the Bar and in line with the principles of natural justice as also for the reason that the petitioners may not be precluded from raising their defence at the threshold of the litigation that they are facing, subject to payment of ₹25,000/- as costs, to be paid by the petitioners to respondent No.1, the impugned orders are set aside and the petitioners are granted one week to file their written statement before the Trial Court.

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

The petition is allowed in the above terms.

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

(DEEPAK SIBAL)
JUDGE

October 24, 2019
Jyoti 1

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