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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.8253 of 2018 (O&M)
Date of Decision: 28.02.2019

DEEP CHAND (SINCE DECEASED) THROUGH HIS LRS. AND OTHERS .....Petitioners

Vs

BHIM SINGH AND OTHERS

....Respondents

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Aditya Yadav, Advocate
for the petitioners.

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RAJ MOHAN SINGH, J. (Oral)

CM No.26512-CII of 2018

Prayer made in this application is for bringing on record the legal representatives of deceased/petitioner No.1 Deep Chand, who died on 30.05.2018.

For the reasons mentioned in the application, the same is allowed and the legal representatives of deceased Deep Chand as shown in para no.2 of the application are ordered to be brought on record, subject to all just exceptions.

Amended memorandum of parties is taken on record.

Main case

[1]. Petitioners have assailed the order dated 08.08.2018

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passed by the Addl. Civil Judge (SDJM) Bawal Distt. Rewari, vide which defence of the petitioners/defendants No.1 and 4 was struck off for want of written statement

[2]. Perusal of the record would show that the defendant No.1 had already died on 30.05.2018. Power of attorney on behalf of defendants No.1, 3 and 4 was filed on 03.05.2018 i.e. prior to death of defendant No.1. Notices were issued to defendants No.2 and 5, but the same were not received back served or otherwise. Fresh notices were issued to them for 10.07.2018 i.e. the date on which written statement was filed by defendant No.3 (Ramtirth). Written statement on behalf of defendants No.1 and 4 could not be filed as defendant No.1 had already died on 30.05.2018. The case was adjourned to 08.08.2018 i.e. on which the defence of the defendants No.1 and 4 was struck off for want of written statement.

[3]. There is some ambiguity in drafting the revision petition, wherein in the headnote of the revision petition, petitioners mentioned that the evidence of the petitioners was closed, in fact defence of defendants No.1 and 4 was struck off vide the impugned order.

[4]. Notice of motion in this case was issued on 04.12.2018. Service qua respondents is complete, however, none has appeared on their behalf.

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[5]. I have considered the submissions made by learned counsel for the petitioners.

[6]. In ***Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379***; ***Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729*** and ***Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353,*** it was held that the provisions in terms of Order 8 Rule 1 CPC does not impose any embargo on the powers of the Court to extend time for filing written statement even beyond the period of 90 days, of course with some restraint. The provision is to be liberally construed being directory in nature, though the same has been couched in a mandatory overtone. Even defendant can be put to terms including imposition of adequate costs.

[7]. The parameters on which discretion is to be exercised is based on the conduct of the defaulting party for which plaintiff can be compensated with adequate costs. The provision being rule of procedure has to be treated directory and has to be applied with some flexibility. Since the rule of procedure is handmaid of justice, so in the interest of of justice one opportunity can be granted to the defendants/petitioners to file written statement on a date to be fixed by the trial Court.

[8]. In view of above, the impugned order dated 08.08.2018

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passed by the Addl. Civil Judge (SDJM) Bawal Distt. Rewari, is set aside. This revision petition is allowed, subject to payment of costs of Rs.10,000/- to be paid to the plaintiffs in equal proportion.

[9]. Payment of costs shall be the condition precedent for granting indulgence by the trial Court in the aforesaid context.

February 28, 2019 **(RAJ MOHAN SINGH)**
Atik **JUDGE**
Whether speaking/reasoned Yes/No
Whether reportable Yes/No

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