

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.209 of 2020

Date of Decision:13.1.2020

Chandram and others

...Petitioners

Versus

Dharam Bir and others

...Respondents

CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA

Present: Mr.Mani Ram Verma, Advocate
for the petitioners

RAJIV NARAIN RAINA, J. (ORAL):

1. This petition has been filed by defendants No. 5,9,12 and 13 against the order dated 7.11.2019 (Annex.P5) precluding the petitioners from filing written statement by striking of the defence.

2. Learned Civil Judge (Jr.Divn.) Bahadurgarh, has denied further opportunity to the defendants-petitioners from filing written statement only for the reason that they have been appearing from the year 2018 without response in writing.

3. Mr.Verma for the petitioners submits that this order is erroneous and aborts the rights of the defendants-petitioners to their prejudice even before the written statements of the other defendants have come in. Worse still, in support of this order to be set aside in the interest of justice is the fact that those defendants are not yet served in the suit due to the fault and conduct of the plaintiff for lack of due diligence in prosecuting the suit. The plaintiff failed to supply copies of the plaint for serving

summons on the remaining defendants. Counsel is right in submitting that if the order is allowed to stand, grave injustice would be done to the defendants-petitioner as they will be precluded from advancing their stand against the suit and hence an irreparable loss would be occasioned to them which cannot be cured if not remedied today.

4. Mr.Verma makes a statement at the Bar on instructions from the counsel in the Court below that the written statement was and is still ready for filing but on the date the impugned order was passed the signatures on it were awaited but the court ignored the request. In such circumstances the trial court should have adjourned the case to the next day or given a short adjournment to receive the reply.

5. When the written statement is ready to be filed and is in hand duly signed, the order has to be set aside. The status quo ante has to be restored with permission to the petitioners i.e. defendants No.5,9,12 and 13 to tender the written statement on the next date of hearing before the court below i.e. 23.1.2020.

6. In view of the above, the petition is allowed. Impugned order dated 7.11.2019 (Annex.P5) passed by the trial Court is set aside. Learned Civil Judge (Jr.Division), Bahadurgarh, would also examine the conduct of the plaintiffs in not supplying copies of the plaint to effect service on the unserved respondents which has caused delay in the trial. This is a fact which should not have been overlooked despite heavy board.

7. The trial Court must remember that it should be fair and even handed to all the parties and to treat all in the same way, each who fall among the defendants. It is not unlikely that one or more of the defendants wait for each other's written statements to come in before they venture to

put their own. The petitioner may have paused on this aspect with knowledge that some of the contesting respondents had not been served to await their response. But I am told by Mr Verma that his party's reply was ready but not signed for non-availability of the signatory. I refrain from expressing anything on this as it is for the trial court to see, if there is any truth in it. This order has been passed to do substantial justice.

January 13, 2020
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(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned	Yes
Whether reportable-	Yes/No