

S.No.127

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

CR No.1172 of 2020 (O&M)

Date of Decision:17.02.2020

Rekha Rani

.....Petitioner

Vs.

M/s DSR Developers Pvt. Ltd. and others

.....Respondents

CORAM:- HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present:- Mr. Shantanu Bansal, Advocate for the petitioner.

Rajbir Sehrawat, J.(Oral)

This is a petition challenging the order dated 23.10.2019 passed by the trial Court; vide which the defence of the petitioner/defendant No.2 in the original suit has been struck off; on account of non-filing of the written statement.

The brief facts giving rise to the present petition are that respondent No.1/plaintiff had filed a suit for mandatory injunction for directing the defendant No.1 and defendant No.2/ petitioner to remove the alleged illegal and unauthorised encroachment on the suit property. In the said suit, only defendants No.1 and 3 had filed the written statement. However, thereafter, the defendant No.1 had moved an application under Order 7 Rule 11 CPC for rejection of the plaint. Ultimately, the plaintiff settled the dispute with defendant No.1 and, accordingly, the suit qua him was dismissed as withdrawn. However, in this process, a lot of time was consumed. When the trial Court started proceeding further, it was found that the written statement of the defendant No.2 is not on record, therefore, for non-filing of the written statement, the defence of the defendant No.2/petitioner has been struck off vide the impugned order.

Learned counsel for the petitioner has submitted that earlier, even the petitioner/ defendant No.2 was in talks with the plaintiff for compromise. This fact also finds mention in the proceedings of the trial Court. Therefore, under a wrong impression that she may not be required to file the written statement on account of possible compromise, the written statement was not filed earlier. However, ultimately, the settlement could not be reached with the plaintiff. Hence, the defendant No.2 is required to contest the suit by filing the written statement. However, on account of non-filing of the written statement so far, the defence of the petitioner has been struck off by the Court below. This has caused a gross injustice to the petitioner as such.

Having heard the learned counsel for the petitioner, this Court finds that the suit was filed wayback in the year 2017. The trial Court has struck off the defence of the defendant No.2 only in October, 2019 vide the impugned order. Therefore, per-se, the order passed by the trial Court seems to be appropriate.

However, the fact remains that the period of the interregnum was also consumed by the application moved by defendant No.1 under order 7 Rule 11 CP.C. Ultimately, the plaintiff had compromised the matter with defendant No.1. It is also reflected from the record that even the defendant No.2/petitioner was in talks with the plaintiff for the compromise. Although the compromise has not materialised, however, it gives substance to the averment of the petitioner that during this period she was under a misconception that she may not be required to file the written statement at all. Howsoever misplaced and wrong perception; the petitioner might be

having, the fact remains that now the suit is required to be contested on merits. The proceedings of the suit are at the initial stage. The evidence of the plaintiff has not yet started. Therefore, it would not be unjustified if the petitioner is granted one opportunity to file his written statement, however, by putting her to appropriate financial burden.

In view of the above, the present petition is disposed of with a direction to the trial Court to grant one effective opportunity to the petitioner to file her written statement, however, subject to payment of Rs.15,000/- as costs. The costs be deposited with the Institute for the Blinds, Sector, 26, Chandigarh, within a period of two weeks from today.

It is further clarified that the petitioner shall be granted opportunity to file the written statement only after she produces the receipt of having deposited the costs, as mentioned above.

February 17, 2020
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(RAJBIR SEHRAWAT)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No