

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

CIVIL REVISION No.7873 of 2019
DATE OF DECISION : 14th FEBRUARY, 2020

Mrs. Rajesh & others

.... Petitioners

Versus

Mrs. Kiran & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Sandeep Kumar Rana, Advocate for the petitioners.
 Respondent No.1 – deceased.
 Mr. Rajiv Sharma, Advocate for respondents No.2 to 4.
 Mr. Surinder Dagar, Advocate for respondent No. 5 & 6.

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RAJBIR SEHRAWAT, J. (Oral)

The present petition has been filed under Articles 227 of the Constitution of India; challenging order dated 13.11.2019 passed by the Civil Judge (Junior Division), Palwal, vide which the defence evidence of the petitioners/defendants No.1 to 4 in original suit, has been struck off on account of non-filing of the written statement within a period of 90 days.

It is contended by the counsel for the petitioners that the petitioners had engaged Sh. T. S. Tomar, Advocate as their counsel to represent them before the trial court. However, unfortunately the counsel of the petitioner had to be operated upon in the interregnum; therefore, he could not file the written statement within the prescribed period of 90 days. Still further it is submitted that the case is at the initial stage. The evidence of the plaintiffs is yet to start. Therefore, if the petitioners are

permitted to file the written statement at this stage, no prejudice would be caused to the plaintiffs as well. It is also submitted that the petitioners need only one opportunity to file the written statement. Hence, it is prayed that the impugned order be set aside and the petitioners be permitted to file their written statement so as to contest the claim of the plaintiffs.

On the other hand, counsel for respondents No.2 to 6 have vehemently opposed the prayer of the petitioners. It is submitted that no document has been placed on record to show that the counsel was hospitalized. The petitioners had deliberately not filed the written statement to prolong the proceedings of the suit and to delay the passing of the interim order by the trial court in favour of the respondents/plaintiffs.

Having heard learned counsel for the petitioner; and having perused the file, this court finds that the suit is at the initial stage. The evidence of the parties has not yet started. Therefore, if the petitioners/defendants are permitted to file their written statement, the plaintiffs would not suffer any prejudice. Rather, they will be having full opportunity to rebut the assertions which the petitioners may take in their written statement.

Although, the petitioners may be lacking in placing on record the documents; to substantiate their assertion that the counsel for the petitioners before the court below, was operated upon, however, the very fact that the presence of the Clerk of the counsel for the petitioners is marked, shows that neither the counsel was negligent nor should the petitioners be punished for the said absence of their counsel on the said

date. In all probabilities, the counsel was, in fact, suffering from the problem; as is being pleaded by the counsel for the petitioners. Hence, it would not be unjustified if the petitioners are granted opportunity to file their written statement, however, by putting them under appropriate financial burden.

In view of the above, the impugned order passed by the trial court is set aside and it is directed that the petitioners be granted only one opportunity to file their written statement, subject to payment of ₹5,000/- as costs. The costs amount is ordered to be deposited with the District Legal Service Authority, Palwal, within a period of two weeks from today.

It is further clarified that the petitioners shall be granted opportunity to file their written statement, only after they produce the receipt of having deposited the costs amount, as ordered above.

Disposed of.

14th FEBRUARY, 2020
'raj'

(RAJBIR SEHRAWAT)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>	<i>No</i>
<i>Whether Reportable:</i>	<i>Yes</i>	<i>No</i>