

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

**CIVIL REVISION No.8345 of 2019 (O&M)
DATE OF DECISION : 6th JANUARY, 2020**

Narinder Singh & another

.... Petitioners

Versus

Harvinder Singh & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

* * * *

Present : Mr. Gaurav Rana, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

This revision petition under Article 227 of the Constitution of India has been filed by the petitioners for setting aside of order dated 25.09.2019 passed by the Civil Judge (Junior Division), Ludhiana, whereby the defence of the petitioners/defendants have been struck-off on the ground of not filing the amended written statement within the statutory period.

Referring to the pleadings of the petition and the orders passed by the court below, the counsel for the petitioners submitted that the petitioners/defendants are not solely responsible for dragging the proceedings of the suit at all. Rather it was the plaintiffs/respondents who had also moved an application for amendment of the plaint. Vide order dated 10.04.2019, the said application was allowed by the trial court subject to payment of ₹1000/- as cost; to be paid to the defendants/petitioners. Thereafter although the order dated 15.05.2019 passed by the trial court shows that the amended plaint has been brought

on file, however, the cost imposed upon the plaintiffs/respondents was not paid by them. This default in payment continues on the part of the plaintiffs even till today. Even now, the cost has not been paid by the plaintiffs. Hence, the order dated 10.04.2019, whereby the amendment application was allowed, has not been fully complied with by the plaintiffs. Hence, in the eyes of law, the amended plaint itself is not the part of the record of the suit. Therefore, the trial court should not have started counting the prescribed time to oust the defense, till the conditional order dated 10.04.2019 was fully complied by the plaintiff. The question of filing the amended written statement would arise only if the amended plaint forms the part of the record of the suit as per the law. Hence, the order passed by the courts below deserves to be set aside. The petitioners deserve to be granted one more opportunity to file the amended written statement.

It is further submitted by the counsel for the petitioners that the counsel engaged by the petitioners/defendants before the trial court, was suffering from deadly disease of cancer and was taking treatment for the same. This fact has also come on record of the court below. Therefore, the alleged delay in filing the amended written statement was partly contributed by the non-availability of the counsel for the effective work. Hence, the petitioners should not be penalized for the reasons which are not attributable to them.

In view of the nature of the order, which is being passed at this stage, this court does not deem it necessary to issue the notice to opposite side.

Having heard, the counsel for the petitioners and perused the case file, this court finds substance in the argument of counsel for the petitioners that the plaintiffs themselves had not complied with the order dated 10.04.2019 passed by the trial court; by not making the payment of cost amount, subject to which amendment of plaint was allowed. Hence, strictly speaking, though amended plaint has been taken on record by the court below, however, the said amended plaint cannot be taken as validly filed; due to non-payment of cost by the plaintiffs/respondents

This court also find substance in the argument that the counsel for the defendants was undergoing treatment for a disease, during which he could not have effectively worked. Hence, it would not be appropriate to penalize the petitioners/defendants for such a reason which is beyond their control. Therefore, it would not be unjustified, if the petitioners are granted one more opportunity to file the amended written statement, subject to payment of the cost amount; as was ordered by the trial court.

In view of the above, the impugned order dated 25.09.2019 is set aside and the present petition is disposed of with a direction that the trial court shall grant one more effective opportunity to the petitioners to file amended written statement and thereafter shall proceed with the suit, in accordance with law.

6th JANUARY, 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>