IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

(219) **CR No. 2348 of 2020**
Date of Decision : 08.04.2021

Sunder Lal and another

...Petitioners

Versus

Satyabir and others

...Respondents

(through video conferencing)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

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

Mr. Rakesh Dhiman, Advocate for the respondents.

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Harsimran Singh Sethi J. (Oral)

In the present civil revision, the challenge is to the order dated 14.02.2018 (Annexure P-1) by which, the defence of the petitioners, who were the defendants no. 1 and 8, has been struck off and also to the order dated 06.03.2020 rejecting the application filed by the petitioners-defendants for recalling the order dated 14.02.2018 (Annexure P-1).

Learned counsel for the petitioners argues that the order dated 14.02.2018 (Annexure P-1) has been passed only on the ground that the statutory period of 90 days for filing the written statement has elapsed. Learned counsel for the petitioners submits that the said period of 90 days fixed is not mandatory but is directory and therefore, the order should have been passed by the Court below keeping in view the other relevant facts. Learned counsel for the petitioners further submits that the application filed by the petitioners for recalling the said order has been dismissed being not maintainable. Learned counsel for the petitioners prays that one opportunity be granted to the petitioners to file the written statement even if the cost is to be imposed for the grant of the said opportunity.

Learned counsel appearing on behalf of the respondents submits that the defence was struck off vide impugned order dated 14.02.2018 (Annexure P-1) after the expiry of statutory period of 90 days for filing the written statement, therefore, no fault can be found in the same. Learned counsel for the respondents further argues that rejection of the application for recalling the order dated 14.02.2018 (Annmexure P-1) was not maintainable and was rightly rejected by the Court below.

I have heard learned counsel for the parties and have gone through the record with their able assistance.

A perusal of the impugned order dated 14.02.2018 (Annexure P-1) would show that on the date when the defence of the petitioners, who were the defendants No. 1 and 8, was struck off, all the defendants were not even served. Rather, the plaintiff had not even deposited the process fee for the service of the unserved defendants. Once, the service of co-defendants was yet to be completed, the Courts below should have exercised the discretion to allow the petitioners to file written statement by extending time in view of these facts. Striking off the defence of the petitioners under these circumstances, where the other co-defendants of the petitioners were yet to be served, was not at all warranted. The petitioners/defendants No. 1 and 8 could have been put to cost for extension of time for filing the written statement.

The settled principle of law is that all should be allowed to participate in the proceedings and the question of law raised should be decided on merits and no one should be restrained from assisting the Court on merits. It is further not disputed that the fixation of 90 days statutory period is directory as far as the civil cases are concerned and is mandatory, where the financial issues have been raised.

In the present case, as conceded by the learned counsel for the respondents, no financial issue has been raised, hence the Court below should have exercise the discretion so as to grant extension of time so as to achieve the interest of justice.

The present civil revision is allowed. The orders dated 14.02.2018 (Annexure P-1) and 06.03.2020 (Annexure P-2) are set-aside. One opportunity is given to the petitioners to file the written statement.

Let the written statement be filed on or before the next date of hearing fixed before the trial Court, which is 10.05.2021. In case, the written statement is filed within the timeframe granted, the trial Court is directed to accept the same and thereafter proceeds further in accordance with law. The respondents have shown the magnanimity in stating that rather than giving the cost to the respondents, the same should be paid to the Orphans for their betterment. Hence, the petitioners are directed to deposit a sum of Rs. 10,000/- as costs with Prabh Asra, Bank A/c No. 014894600000970, Yes Bank Branch, SCO 151-152, Sector 9-C, Chandigarh, before filing the written statement.

Civil Revision is disposed of in above terms.

April 08, 2021 **(HARSIMRAN SINGH SETHI)**
kanchan **JUDGE**

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No