

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

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CR No.2731 of 2021 (O&M)
DATE OF DECISION : 11th NOVEMBER, 2021

Om Parkash and others

.... Petitioners

Versus

Partap Singh @ Dalip Singh and others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Sanjay K.Saini, Advocate for the petitioners.

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RAJBIR SEHRAWAT, J. (Oral)

This is a revision petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 11.07.2018 (Annexure P-1) passed by the Civil Judge (Junior Division), Jind, vide which the defence of the petitioners have been struck off and order dated 14.07.2021 (Annexure P-4) passed by the Civil Judge (Senior Division), Jind, vide which the application for permission to file written statement has been dismissed.

It is submitted by the counsel for the petitioners that the petitioners had appeared before the trial Court through their counsel. Because of the communication gap between the petitioners and their counsel, the written statement could not be filed on behalf of the petitioners. Hence, the trial Court had struck off the defence of the present petitioners; despite the fact that some of the co-defendants were yet to be served in the suit. Moreover, the petitioners being totally illiterate; could have only made

an endeavor to request their counsel to ensure that the written statement on their behalf was filed well in time. However, that endeavor could not materialize. Hence, the default in filing the written statement at the relevant time was not intentional on the part of the petitioners. Since, the petitioners had not intentionally avoided filing the written statement(s), therefore, subsequently; they even filed an application for seeking permission from the trial Court to file the written statement. However, even that application stands dismissed by the Court below. Hence, if the petitioners are not granted opportunity to file the written statement, they will suffer an irreparable legal injury and they will be deprived of an opportunity of hearing; without their fault. The case is still at the stage of evidence of the plaintiffs. Any evidence of the defendants is yet to start. Therefore, it would not even prejudice the case of the plaintiff/respondents, if the petitioners are granted one more opportunity to file the written statement(s) and to defend the suit, as per the law.

Having heard the counsel for the petitioners and having gone through the paper book, this Court finds that the petitioners; as defendants in the suit; were granted several opportunities to file the written statement. However, all such opportunities were wasted by the petitioners. Hence, the trial Court has not committed any legal error in striking off the defence of the petitioners or in dismissing their application, as such. However, the another aspect involved in the matter is that if the petitioners are deprived of the opportunity to file the written statement, and to defend the suit, then their stand in the suit is liable to go totally unheard, which can result into injustice to the petitioners and to undue benefit to the plaintiffs. Moreover, in case of an option for the Court to choose between the substantial justice and the procedural requirements, the Court has to lean towards the

interest of the substantial justice. Hence, it would not be unjustified to grant one more opportunity to the petitioners to file the written statement(s) and to contest the suit thereafter, however, by putting them to an appropriate financial burden.

In view of the above, the present revision petition is disposed of by setting aside the impugned orders; and with a further direction to the trial Court to grant one more opportunity to the petitioners to file their written statement(s) and thereafter defend the suit accordingly. However, this opportunity shall be subject to payment of ₹10,000/- as costs, to be deposited with the Poor Patients Welfare Funds, PGIMER, Chandigarh, within a period of 10 days from today.

It is also clarified that the trial Court shall grant the above said opportunity to the petitioners only on production of the receipt before it qua the costs having deposited, as ordered above.

11th NOVEMBER, 2021
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(RAJBIR SEHRAWAT)
JUDGE

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