

114

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CM-8703-CII-2022 in/and
CR-1970-2019 (O&M)
Date of Decision:22.07.2022

Baljinder Singh & others

.. Petitioners

Vs.

Gurdeep Singh and others

..Respondents

CORAM: HON'BLE MR. JUSTICE MANOJ BAJAJ

Present: Mr. Naresh Jain, Advocate for the petitioners.

Mr. R.K. Girdhar, Advocate for
applicant-respondent Nos.1 and 2.

...

Manoj Bajaj, J. (Oral)
CM-8703-CII-2022

Learned counsel submits that this application has been filed under Section 151 CPC for vacation of interim order dated 27.03.2019, which was further extended on 07.03.2022, and in the alternative, he prays for deciding the main case, by preponing the date of hearing.

Notice of this application.

At this stage, Mr. Naresh Jain, Advocate accepts notice on behalf of the petitioners/non-applicants and states that the date of hearing in the main petition be preponed.

In view of the above, the date of hearing in the petition is preponed and the same is taken up for hearing today.

CM stands disposed of.

CR-1970-2019 (O&M)

Petitioners (defendants No.1 to 3) have filed this revision

petition by invoking superintendence powers of this Court under Article

227 Constitution of India to challenge the order dated 15.02.2019 passed by Civil Judge (Jr. Divn.), Malout, in Civil Suit No.386 of 2017, whereby their application dated 29.01.2019 (Annexure P-3) seeking permission to file the written statement, was dismissed.

The brief facts of this case are that the plaintiffs (respondents No.1 and 2) filed a suit for specific performance of agreement to sell dated 13.01.2017, whereby defendants No.1 to 4 had agreed to sell their land measuring 29 kanals 16 marlas comprising Khewat No.27 khatauni No.38 Rect No.120 Killa No.6(8-0) 7(8-0) 8/1 (6-18) 9/1(6-18) kittas 4 situated in the revenue estate of village Fatuhi Wala, Tehsil Malout, District Sri Muktsar Sahib for a total sale consideration of Rs.31,66,500/- in their favour. Alternatively, a decree for recovery of Rs.26,45,000/- (earnest money and damages) has also been prayed for.

Upon notice, all the defendants appeared in the suit proceedings and sought time to file written statement and the same was filed on 10.11.2017.

After the completion of pleadings, the trial commenced and when the defendants were in process of adducing their evidence, it was noticed that the written statement filed on behalf of all the defendants is signed by only defendant No.4-Sukhmander Singh @ Bittu, whereas the petitioners/defendants No.1 to 3 have neither signed it nor verified it.

Thus, an application was moved by defendants No.1 to 3 seeking permission to file the written statement. The application was contested by the plaintiffs, who filed their reply. The Civil Judge (Jr. Divn.), Malout vide impugned order dated 15.02.2019 dismissed the said application. Hence this revision petition.

Learned counsel for the petitioners has argued that the written statement was advertently not signed by the defendants No.1 to 3 and the claim of the plaintiffs is regarding specific performance of the agreement to sell dated 13.01.2017, therefore, it would be in the interest of justice, if defendants No.1 to 3 are allowed to file their written statement. He submits that no doubt, the defendant No.4 Sukhmander Singh @ Bittu has signed the written statement, and the parties have also adduced their evidence, but, if, the petitioners are not allowed to contest the suit effectively, it would result in miscarriage of justice. He submits that though the petitioners are pursuing the case and are being represented through their counsel, but this omission was noticed at a belated stage of the suit proceedings, therefore, the necessary application was moved, whereas, the trial Court has declined the said prayer only on the ground that this is meant to fill up a lacuna. Learned counsel prays that the impugned order dated 15.02.2019 be set aside.

Mr. R.K. Girdhar, learned counsel for the plaintiffs/respondents No.1 and 2 has vehemently opposed the prayer, and argued that the defendants are well aware of their right to contest the suit, but they have chosen not to file their written statement and the plaintiffs have already concluded their evidence, therefore, at this stage, the plaintiffs cannot be encountered with this surprise of filing written statement. He submits that there is every likelihood that they would take a different version than defendant No.4, and it would cause delay in the final adjudication of the suit. According to him, the trial Court has considered the background of the case carefully and has rightly declined the application filed by the defendants No.1 to 3. He prays for dismissal of the petition.

After hearing the learned counsel for the parties, this Court finds that no doubt, the suit proceedings are at an advanced stage and no written statement on behalf of the petitioners (defendants No.1 to 3) is on record. The written statement signed by defendant No.4 alone would not be binding on these petitioners and the omission to sign the written statement by these petitioners, does not appear to be deliberate, as no person would like to contest the suit proceedings without filing the written response. During the course of hearing, it is not disputed by learned counsel for the parties that neither the defence of defendants No.1 to 3 was struck off for not filing the written statement nor they were ever proceeded against *ex parte*, as they are being represented by their counsel. Thus, this Court finds that in case, the defendants are allowed to file the written statement, no prejudice would be caused to the other side, who shall be given an opportunity to controvert the stand of the defendants No.1 to 3.

At this stage, Mr. Girdhar, learned counsel for the plaintiffs submits that the defendants/petitioners be directed not to adopt a stand contrary to the stand contained in the written statement signed by respondent No.4. This Court does not find any merit in this submission, as the parties cannot be directed by the Court to take a particular stand.

Resultantly, the impugned order dated 15.02.2019 is set aside, and application dated 29.01.2019 (Annexure P-3) filed by petitioners/defendants No.1 to 3 under Section 151 CPC seeking permission to file written statement is allowed.

22.07.2022
Jasmine Kaur

(MANOJ BAJAJ)
JUDGE

Whether speaking/reasoned	Yes	No
Whether reportable	Yes	No