

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

115

CR No.2798 of 2021 (O&M)
DATE OF DECISION : 10th JANUARY, 2022

Umed Sigh & others

.... Petitioners

Versus

Zile Singh @ Ballu & others

.... Respondents

CORAM : HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

=====
In virtual Court
=====

Present : Mr. Piyush Aggarwal, Advocate for the petitioner.

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RAJBIR SEHRAWAT, J. (Oral)

CM-12611-CII-2021

This is an application filed under Order 22 Rule 3 read with Section 151 C.P.C. for impleading the LR's of petitioner No.2-Raj Kumar, since deceased.

The counsel for the petitioners submits that the LR's of petitioner No.2 herein have already been brought on record before the court below, therefore, he does not wish to press the present application.

In view of the above, the application stands dismissed as not pressed.

CR No.2798 of 2021

The petitioners have filed this civil revision under Article 227 of the Constitution of India, praying for setting aside order dated 16.07.2018 passed by the learned Civil Judge (Sr. Division), Jhajjar,

whereby the defense of the petitioners has been struck off, and the subsequent order dated 29.09.2021, vide which the application for setting aside order dated 16.07.2018, filed by the petitioners, has been dismissed; along with certain other prayers.

It is submitted by the counsel for the petitioners that although there had been a delay in filing the written statement within the prescribed time, however, the same was not intentional on the part of the petitioners. Since the written statement was to be filed as based upon the records; which are as old as pertaining to the year 1879 and the same were in *Urdu*, which is not a common language in the area where the petitioners reside, and hence, the petitioners needed external help for completing the requirements of filing the written statement. Although the trial court had passed the earlier order striking off the defense of the petitioners, however, the petitioners had immediately filed the application for recalling in the said order. After a long time the said application has also been declined by the trial Court. The counsel has further submitted that now the entire material, along with the written statement to be filed before the court, is ready and the same has even been presented before the trial court, though the same has not been taken on record by the trial court so far. Therefore, it would be in the interest of justice if the petitioners are permitted to contest the suit and written statement filed by them is permitted to be taken on record.

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

A perusal of the record shows that the petitioners have been negligent in availing opportunities of filing written statement and defending their suit. The petitioners availed at least three effective opportunities to file the written statement so as to contest the suit. However, the said opportunities were not availed by the petitioners. Although, the counsel has come forward with a ground qua the difficulty of getting the records and translating them in the court language, however, that would also be a very weak kind of ground for not filing the written statement in time. Hence, this court does not find any impropriety with the order passed by the court below, as such. However, it is settled law that the procedural law is hand-made to subserve the purpose of disbursal of substantial justice. In case of conflict between the procedural aspects and the substantial justice, it is the interest of substantial justice which has to prevail in the court proceedings. The petitioners are the defendants in the suit. If their defense is struck off and they are not permitted to file their written statement then their case is likely to be seriously prejudiced. Hence, it would be appropriate to grant one opportunity to the petitioners to file their written statement and thereafter to contest the suit accordingly, however, by putting them under some appropriate financial burden.

In view of the above, the present petition is disposed of by setting aside the impugned order dated 16.07.2018 passed by the court below, with a further direction to the trial court to grant one more effective opportunity to the petitioners to file whatever written statements the petitioners so desire, however, subject to payment of cost of ₹15,000/- to be deposited with the Patient Care Fund, PGIMS, Rohtak,

within a period of fifteen days from today. It is further clarified that the trial court shall grant this opportunity to the petitioners only on production of the receipt before it qua having deposited the cost amount, as ordered above.

10TH JANUARY, 2022
‘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>