

[111] IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-41-2023 (O&M)

Date of Decision :27.01.2023

JOGINDER SINGH

...Petitioner

Versus

PARVINDER SINGH @VICKY AND ORS

....Respondents

Coram : Hon'ble Mr. Justice B.S. Walia

Present : Mr. Hardeep Singh, Advocate for the petitioner.
Mr. A.K. Walia, Advocate for respondent No.1.

B.S. Walia, J. (Oral)

[1] Challenge in the instant petition is to order, Annexure P/7 dated 02.12.2022 passed by the learned trial Court whereby the defence of the petitioner/defendant No.1 was struck off.

[2] A perusal of order, Annexure P/7 reveals that the petitioner/defendant No.1 had appeared in the case on 15.02.2021 but did not file the written statement despite lapse of one year and ten months. Accordingly, by observing that no further adjournment was justified, defence of the petitioner/defendant No.1 was struck off and the case adjourned to 24.01.2023.

[3] Pursuant to the notice issued on 12.01.2023 for final disposal, Mr. A.K. Walia, learned Counsel has put in appearance on behalf of respondent No.1 and contends that in view of the petitioner/defendant No.1 not having filed the written statement within the stipulated period of time, impugned order, Annexure P/7 dated 02.12.2022 was rightly passed, therefore, the petitioner is not entitled for setting aside of the impugned order.

[4] Learned counsel for the petitioner on the other hand contends that the petitioner had filed an application under Order 7 Rule 11 CPC which was dismissed on 26.08.2022 whereafter the matter was adjourned to 04.10.2022 for filing of written statement but on the said date, on request of the petitioner/defendant No.1, the case was adjourned to 02.12.2022 but the same could not be filed on 02.12.2022 due to circumstances beyond the control of the petitioner / defendant No. 1 resulting in the passing of the impugned order striking of the defence of the petitioner. Learned counsel contends that in the circumstances, at best one adjournment was granted i.e. 04.10.2022 and on 02.12.2022, defence of the petitioner/defendant No.1 was struck off and the case adjourned to 24.01.2023. Learned counsel prays for grant of one opportunity to the petitioner/defendant No.1 to file written statement otherwise grave prejudice would be caused to the petitioner/defendant No.1 as the respondent/plaintiff has instituted a suit against the petitioner/defendant No.1 for damages on account of malicious prosecution on account of the petitioner/defendant No.1 having registered an FIR No.248 dated 10.08.2012 under Section 420 IPC at Police Station Tripuri, Patiala in which the respondent/plaintiff was acquitted.

[5] I have considered the submissions of learned counsel and in view of the position noted above, I am of the considered view that since the case is at the initial stage, one opportunity be granted to the petitioner/defendant No.1 to file the written statement subject to payment of costs of Rs.15,000/- to the respondent/plaintiff.

Annexure P/7 dated 02.12.2022 is set aside and petitioner/defendant No.1 granted one opportunity to file the written statement three days before the next date fixed before the learned trial Court i.e. 02.03.2023 subject to payment of costs of Rs.15,000/- to the respondent/plaintiff. Needless to mention, in case costs are not paid or written statement is not filed three days before the next date fixed before the learned trial Court (i.e. 02.03.2023), the learned trial Court would be at liberty to proceed further in accordance with law in terms of order, Annexure P/7 dated 02.12.2022.

[7] Petition disposed of in above terms.

27.01.2023

'Amit'

(B.S. Walia)
Judge

Whether speaking/ reasoned : Yes/No

Whether reportable : Yes/No