

Malkit Singh and another

....Petitioners

versus

Jasvir Kaur and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA

Present:- Mr. Kulwant Singh, Advocate for the petitioners.

None for respondents.

ARUN MONGA, J. (ORAL)

Present revision petition is against impugned order dated 06.03.2018 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Ludhiana whereby application dated 18.07.2017 (Annexure P-3) for review of order dated 19.07.2017 (Annexure P-2) passed by the aforesaid Court, was dismissed. Vide order dated 19.07.2017 (Annexure P-2), defence of petitioner-defendants No.2 and 3 was struck off for want of written statement.

2. Learned counsel for petitioners submits that petitioner-defendants No.2 and 3 were under impression that case before learned Court below was fixed for service of defendant No.1 and not for filing written statement. Defence of the petitioner-defendants No.2 and 3 was struck-off on 19.07.2017. Thereafter, petitioner-defendants No.2 and 3 filed an application for review of said order, which was also dismissed vide impugned order dated 06.03.2018 (Annexure P-5). Impugned order was never conveyed to petitioner-defendants No.2 and 3 by their earlier counsel before learned Court below. It is only when they engaged a new counsel, who after inspecting the record, informed about passing of the impugned order.

3. Order dated 10.12.2018 shows the appearance on behalf of respondents. Today none appears on behalf of respondents. I have heard learned counsel for petitioner and perused the case file.

4. Rules of procedure are handmaid of justice and cannot be allowed to thwart real and substantial justice between the parties. Prejudice would indeed be caused to petitioners unless afforded an opportunity to file written statement. Trial in the suit may lead to unjust consequences as there would be no contest in the absence of written statement.

5. Provisions contained in Order VIII Rule 1 CPC though ought to be adhered to but learned Court below could have still permitted petitioners to file written statement, subject to certain penalty as a deterrent. These provisions have been held to be directory in nature by the Supreme Court in ***Salem Bar Association Vs. UOI, 2005(6) SCC 344***. The Courts should not, therefore, be too harsh to strike off the defense of defendants at early stage.

6. For the foregoing reasons, I deem it appropriate to grant one more opportunity to petitioners/defendants No.2 and 3 for filing the written statement. To that extent, impugned order deserves to be modified and the revision petition ought to be allowed. Ordinarily, this Court would have imposed some costs. However, looking at the stage of trial and the zimni orders reproduced/ mentioned in the petition and extra burden of litigation before this Court borne by the petitioners, imposition of costs is not warranted in this case.

7. That apart, learned counsel for petitioners points out that despite service, respondent No.1-plaintiff No.1 is choosing not to appear before this Court as she has already performed second marriage and is living at her current matrimonial house and infact has lost all interest in the suit which was, at the relevant time, filed by her.

7.1 Be that as it may, without commenting whether or not respondent No.1-plaintiff No.1 is interested to pursue the suit or not and in view of the fact that despite opportunity there is no opposition to the revision petition, same is allowed.

8. Disposed of, accordingly.

9. Pending application(s), if any, shall also stand disposed of.

(ARUN MONGA)
JUDGE

February 17, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No