

CR-2173-2023 (O&M)
Date of Decision :13.04.2023

VIJAY LAXMI AND OTHERS

...Petitioners

Versus

MITHLESH AND ANOTHER

....Respondents

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

Present : Mr. Sanjay Verma, Advocate for the petitioners.

B.S. Walia, J. (Oral)

[1] Prayer in the instant petition is for setting aside order, Annexure P/4 dated 02.03.2023 passed by the learned Civil Judge (Jr. Div.), Palwalstriking off the defenceof petitioners/defendant Nos.1, 3, 4 and 5 due to non-filing of the written statement.

[2] A perusal of the paper book reveals that the petitioners put in appearance before the learned Civil Judge (Jr. Div.), Palwalon 10.03.2022 whereafter the case was adjourned to 05.09.2022, 09.11.2022, 19.12.2022 and 02.02.2023 but neither written statement was filed nor reply to the application under Order 39 Rule 1 and 2 CPC was filed whereupon the defence of the petitioners/defendants No.1, 3, 4 and 5 was struck off vide order dated 02.03.2023 (Annexure P/4).

[3] A perusal of the details given above reveals that there is no infirmity in the order passed by the learned trial Court.

[4] At this stage, learned counsel for the petitioners states that the case is at the initial stage only as respondent No.2 is yet to file the written

statement and the case now stands adjourned to 01.05.2023 for filing of written statement by respondent No.2 and in case one opportunity is not granted to the petitioners, grave and irreparable damage would be caused to the petitioners, besides, the dispute is inter se parties who are family members.

[5] I have considered the submissions of learned counsel. Although the petitioners have been remiss in not filing reply to the application under Order 39 Rule 1 and 2 CPC as also written statement, yet taking into account that the matter stands adjourned to 01.05.2023 for filing of written statement by respondent No.2 and that the dispute is inter se family members and grave and irreparable damage would be caused to the petitioners in case they are not granted one opportunity to file written statement, the instant petition is allowed. Impugned order, Annexure P/4 dated 02.03.2023 passed by the learned Civil Judge (Jr. Div.), Palwal striking off the defence of the petitioners/defendant Nos.1, 3, 4 and 5 is set aside and the petitioners are granted one opportunity to file written statement on or before the next date i.e. 01.05.2023 subject to payment of costs of Rs.15,000/- to the respondents in equal proportion as a condition precedent to the petitioners being allowed to file the written statement. The aforementioned orders are being passed without issuing notice to the respondents as the same would unnecessarily delay the proceedings, besides, no useful purpose would be served except for saddling the respondents with the responsibility of engaging counsel and incurring costs for defending the petition. Moreover, no prejudice would be caused

to the respondents since the case is already listed before the learned trial Court for 01.05.2023 for filing of written statement on behalf of respondent No.2.

[6] Petition disposed of with the aforementioned directions.

13.04.2023

(B.S. Walia)
Judge

‘Amit’

Whether speaking/ reasoned	:	Yes/No
Whether reportable	:	Yes/No