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114 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2138-2023 (O&M)
Date of Decision: 12.04.2023

Sohan Lal and others

..... Petitioners

Versus

Manjeet Kaur and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJBIR SEHRAWAT

Present : Mr. Krishan Sharma, Advocate,
for the petitioners.

RAJBIR SEHRAWAT, J. (ORAL)

CM-6290-CII-2023

Allowed, as prayed for.

Main case.

This is a petition filed under Article 227 of the Constitution of India for setting aside the impugned order dated 19.01.2023 (Annexure P-1) passed by the Civil Judge (Junior Division), Kharar, whereby the defence of the petitioners/defendants No.7 to 10 was struck off and for affording one more opportunity for filing written statement has been dismissed.

It is submitted by the learned counsel for the petitioners that the Trial Court has wrongly struck off the right of the petitioners to file the written statement and their defence. Learned counsel has further submitted that the case is still at the stage of service of the defendants in the suit. The Trial Court has not even entered into framing of the issue so far. Therefore, striking off the defence, at this stage, is totally uncalled for. Learned counsel has further submitted that although, the petitioners could not file the

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written statement so far, however, that has happened because of communication gap between their counsel and the petitioners. Even the counsel was under the impression that since the case is still at the stage of service of other defendants, therefore, the petitioners may be having more time to file the written statement. However, the written statement on behalf of the petitioners is ready and they intend to file the same before the Trial Court, if they are provided one more opportunity. Moreover, the petitioners are the contesting defendants in the suit and their case would be seriously prejudiced, if they are not granted permission to file the written statement and to defend the suit accordingly. Hence, it is prayed that the impugned order be set aside and the petitioners be granted an opportunity to file the written statement, and to contest the suit accordingly.

In view of the nature of the order being passed in this case, this Court does not see any requirement of issuing notice to the respondents; at this stage.

Having heard learned counsel for the petitioners and having perused the case file, this Court finds that the petitioners have availed two opportunities and the time of four months for filing the written statement. However, they have chosen not to file the same. The Trial Court was not expected to wait for eternity just for filing of the written statement by the petitioners. Therefore, there is no *ex facie* impropriety in the order passed by the Trial Court, as such.

However, the law of procedure is handmade to advance the interest of the substantial justice. The interest of the substantial justice

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demands that the parties to the *lis* should be heard-out to the maximum possible extent instead of restricting the hearing to the parties. Moreover, the petitioners are the contesting defendants of the suit, therefore, their case would be adversely effected, if they are not permitted to file the written statement and to contest the suit accordingly. Therefore, it would not be unjustified, if the petitioners are granted one effective opportunity to file the written statement, and thereafter, to contest the suit accordingly, however, by putting them under an appropriate financial burden; so as to make them realize their mistake in wasting time of the Court.

In view of the above, the present petition is allowed, the impugned order passed by the Trial Court is set aside and the Trial Court is directed to grant one effective opportunity to the petitioners to file the written statement and thereafter, to contest the suit accordingly, however, subject to payment of Rs.5,000/- as costs; to be deposited by the petitioners with the Poor Patients Welfare Fund, PGIMER, Chandigarh, within a period of 15 days from today.

However, it is clarified that the Trial Court shall grant the aforesaid opportunity to the petitioners only on production of the receipt of the costs having been deposited by the petitioners, as ordered above.

(RAJBIR SEHRAWAT)
JUDGE

12.04.2023
adhikari

Whether speaking/reasoned	Yes/No
Whether Reportable	Yes/No