

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-2204-2023
Date of Decision:-19.07.2023

DEV RAJ AND ANR ... Petitioner(s)
Versus
OM PARKASH AND ORS ... Respondent(s)

-. -

CORAM: HON'BLE MR. JUSTICE KARAMJIT SINGH
-. -

Present:- Mr. Ishan Cooner, Advocate for
Mr. J.S. Cooner, Advocate
for the petitioners.
-. -

KARAMJIT SINGH, J. (Oral)

1. This revision petition has been filed by the petitioners/defendants No.1 and 2 for setting aside/modifying the impugned order dated 6.3.2023 (Annexure P-5), whereby the application filed by the petitioners for setting aside order dated 29.11.2019, whereby both of them were proceeded against *ex-parte* by the Civil Judge (Junior Division), Kalka in civil suit titled Om Parkash vs. Dev Raj and Ors. is partly allowed and *ex-parte* proceedings against them are set aside subject to cost of ₹2,000/- but their defence is struck off with liberty to join the proceedings in the suit at that stage with further right to cross-examine the witnesses of respondent No.1/plaintiff.
2. The counsel for the petitioner submits that if permission is given, the petitioners will file their written statement in the trial Court without any delay. It is further submitted that the statutory time limit of 90 days to file the written statement in a suit for permanent injunction

could be extended. In this context the counsel for the petitioners has placed reliance upon **Bharat Kalra vs. Raj Kishan Chabra 2022(2) DNJ 669**, wherein the Hon'ble Supreme Court held that the delay in filing the written statement could be compensated with cost but denying the benefit of filing of the written statement is unreasonable. So prayer is made that one opportunity be given to the petitioners to file their written statement, may be subject to reasonable cost.

3. I have considered the submissions made by the counsel for the petitioners.
4. From the perusal of the impugned order, it is apparent that the *ex-parte* proceedings against the petitioners were set aside by the learned trial Court but at the same time their defence was struck off on the ground that they failed to file their written statement, despite availing number of opportunities. However, the petitioners were allowed to cross-examine the witnesses of the plaintiff/respondent No.1.
5. From the perusal of the impugned order, it also transpires that by the time the impugned order was passed, no witness on behalf of the plaintiff was examined.
6. In the given circumstances, no prejudice is going to be caused to the respondent No.1/plaintiff if permission is given to the petitioners to file their written statement. It is settled law that preference is to be given to substantive justice over the procedural law. Further, if the petitioners are not allowed to file written statement, serious prejudice would be caused to them and thus the interest of justice demands that

one more chance be given to the petitioners to file written statement.
In case, respondent No.1/plaintiff is prejudiced due to delay being caused by the petitioners in filing the written statement, he could be compensated by imposing cost.

7. In the light of the above discussion, the impugned order dated 6.3.2023 (Annexure P-5) is hereby modified and one last opportunity is granted to the petitioner to file written statement subject to cost of ₹15,000/-, which is to be paid by the petitioners to respondent No.1/plaintiff on the next date of hearing fixed before the learned trial Court.
8. Keeping in view the circumstances detailed above, this petition has been disposed of without issuing any notice to respondent No.1/plaintiff. However, liberty is granted to the respondent No.1/plaintiff that if he feels dissatisfied with this order, he may move an application to recall the same.
9. The petition stands disposed of in the aforesaid terms.

19.07.2023
Gaurav Sorot

(KARAMJIT SINGH)
JUDGE

Whether reasoned / speaking?	Yes / No
Whether reportable?	Yes / No