

CR-2934-2023 (O&M)

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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR-2934-2023 (O&M)

Date of decision: May 12, 2023

Bijender @ Vijender Singh and others

....Petitioners

versus

Smt. Pavitra and others

....Respondents

CORAM: HON'BLE MR. JUSTICE ARUN MONGA**Present:-** Mr. Ram Darshan Yadav, Advocate for petitioners.

ARUN MONGA, J. (ORAL)

Petition herein *inter alia* is for setting aside impugned order dated 20.03.2023 passed by learned Additional Civil Judge (Senior Division), Kosli whereby defence of petitioner/ defendants was ordered to be struck off.

2. The revision petition is premised on the averments that plaintiff-respondent No.1 filed suit for declaration, possession by way of partition and permanent injunction in respect of land in question against defendants. Vide impugned order dated 20.03.2023, defence of petitioners was struck off.

3. Learned counsel for petitioner-defendants submits that defendants could not attend the Court below on 20.03.2023 due to family function and it was a *bona fide* mistake on the part of their counsel that they could not file reply on the aforesaid date. He would submit that in case, petitioners are not allowed to file written statement, then they will suffer an irreparable loss.

4. Considering the nature, facts and circumstances of the case, issuance of notice to respondent No.1-plaintiff seems unnecessary and is, therefore, dispensed with.

5. I have heard learned counsel for petitioners and perused the case file.

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6. 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. Otherwise also, provisions contained in Order VIII Rule 1 *ibid* have been held to be directory in nature by the Supreme Court in *Salem Bar Association Vs. UOI, 2005(6) SCC 344*. The Court should not, therefore, be too harsh to disallow filing of written statement.

7. Trite law it is that procedure is a handmaid of justice and, ought not be given precedence at the cost of subjugation of substantive justice. Prejudice would indeed be caused to revisionists unless afforded an opportunity to file written statement.

8. Consequently, revisionists are granted one opportunity to file written statement subject to payment of costs of Rs.5,000/- to be paid to respondent No.1-plaintiff. Revision stands allowed and impugned order is modified accordingly.

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

(ARUN MONGA)
JUDGE

May 12, 2023
mahavir

Whether speaking/reasoned: Yes/No

Whether reportable: Yes/No