

RA-CR-80-2023 in
CR-2262-2023

2023:PHHC:071042

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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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RA-CR-80-2023 in/&
CR-2262-2023
Date of Decision :16.05.2023

Bhajan Singh and another

...Petitioners

Versus

Shamsher Singh and another

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Sanjeev Kaushik, Advocate for applicant-respondent No.1.

Mr. Yogesh Goyal, Advocate for non-applicant/petitioners.

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Harsimran Singh Sethi, J. (Oral)

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Present review application has been filed for recalling the order dated 18.04.2023 passed by this Court.

Learned counsel for the review-applicant submits that in the present case, the total facts which had already come into being at the time of filing of the revision petition were not brought to the notice of this Court especially, that after passing of the impugned order dated 30.11.2022 striking of the defence of the petitioners-defendants even the testimonies of six witnesses had been recorded and at this belated stage, the petitioners-defendants could not have been allowed to challenge the said order by

which their defence was struck off hence, order dated 18.04.2023 passed by this Court is liable to be recalled.

Learned counsel for the non-applicant/petitioners submits that though, as per the order dated 18.04.2023 passed by this Court written statement has already been filed and the same is taken on record and respondents have also accepted the cost imposed by order dated 18.04.2023 but he has no objection in case order dated 18.04.2023 passed by this Court is recalled and revision petition is again addressed on merits.

Keeping in view the joint request of the learned counsel for the parties, review application is allowed. Order dated 18.04.2023 passed by this Court is recalled and the main civil revision petition is taken up for hearing today itself.

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1. Learned counsel for the petitioners-defendants submits that vide impugned order 30.11.2022 the defence of the petitioner-defendants has been struck off and they may kindly be granted an opportunity to file the written statement so that they are able to bring on record their defence.

2. Learned counsel for the respondents-plaintiffs submits that due opportunities have already been given and even at this stage, testimonies of six witnesses have already been recorded which have also been cross-examined by the petitioners-defendants hence, prayer as raised in the present civil revision petition may kindly be declined and the revision petition may kindly be dismissed.

3. Learned counsel for the petitioners-defendants submits that though, it is a matter of fact that testimonies of certain witnesses have been recorded but the same have not been recorded in accordance with law as no issues have been framed yet on which evidence was required to be brought on record.

4. I have heard learned counsel for the parties and have gone through the record with their able assistance

5. It may be noticed that learned counsel for the parties conceded a fact that issues which arise for consideration have not been framed so far. Keeping in view the conceded fact, nothing has come on record as to on which issues evidence is being brought on record so as to decide the same. Evidence can only be led so as to prove the issues framed for deciding the lis between the parties. The issues are to be proved keeping in view the onus put on either of the parties. In the absence of any issue framed or onus put to prove the issues how can evidence be led?

6. This inadvertence on the part of the parties concerned as well as the Court is unexpected. In the Court of law, not only parties concerned but even the Court has to ensure that the proceedings are conducted in a manner as envisaged under law, which factor is missing in the present case.

7. Keeping in view the fact that issues are yet to be framed and it is only after framing of issues that the parties can lead the evidence in respect of the said issues, the impugned order dated 30.11.2022 by which the defence of the petitioners-defendants was struck off is set aside. Written

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statement filed by the petitioners-defendants is allowed to be taken on record. However, the same will be subject to payment of Rs.10,000 as cost, which cost has already been paid by the petitioners-defendants in pursuance to order dated 18.04.2023 of this Court and has already been accepted by the respondents-plaintiffs.

8. Trial Court is directed that henceforth the trial be undertaken in a manner as envisaged under law by framing issue and thereafter requesting the parties to lead evidence in respect of the issues framed.

9. Present revision petition stands allowed in above terms.

May 16, 2023
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(HARSIMRAN SINGH SETHI)
JUDGE

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