

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR-4799-2022 (O&M)

Date of Decision: February 16, 2023

Jaswinder Kaur and others

...Petitioners

AND

Dera Karsewa Wale and others

...Respondents

CORAM: HON'BLE MRS. JUSTICE ARCHANA PURI

Present: Mr.Saurabh Garg, Advocate
for the petitioners.

Mr.Hardeep Singh Kasan, Advocate
for respondents No.2 and 3.

ARCHANA PURI, J.

Challenge in the present revision petition is to the order dated 05.09.2018 (Annexure P-3), passed by learned Court below, whereby, the defence of the petitioners has been struck off and also challenge has been made to the order dated 24.08.2022 (Annexure P-8), whereby, an application filed for recalling of the order dated 05.09.2018 has been dismissed.

Initially, suit for declaration and possession and for seeking permanent injunction was filed by Dera Karsewa Wale and others against defendants No.1 to 5, namely, Baba Kabal Singh, Jaswinder Kaur, Ramandeep Kaur, Daljeet Kaur and Baba Nirmal Singh.

Perusal of the zimini orders placed on the record, reveals about

defendant No.1 as well as defendants No.2 to 4, separately, to have made appearance through counsel on 24.05.2018. However, on that day, notice was ordered to be issued to defendant No.5 for 05.09.2018 and the appearing parties were directed to file written statement and reply, on the next date of hearing. However, on the next date i.e. 05.09.2018, written statement and reply was not filed by the appearing defendants No.1 to 4 (which also includes the present petitioners, who were defendants No.2 to 4). Since, the written statement and reply was not filed, learned Court below had made an observation that written statement and reply having not been filed, despite lapse of 90 days and hence, defence of defendants No.1 to 4 was struck off and the case was adjourned further for 12.12.2018, for issuance of fresh notice to defendant No.5, on filing of correct address.

Now, it is submitted by learned counsel for the petitioners i.e. who were defendants No.2 to 4, before the Court below, that on 05.09.2018, learned counsel for defendant No.1 had made a request for adjournment, which is also so observed, in the impugned order. Despite the same, the defence was struck off. Only one opportunity had been given to file the written statement and reply. Also, it is submitted by learned counsel for the petitioners that on that very day i.e. 05.09.2018, through the counsel for defendant No.1, an application for recalling of the order, qua striking off the defence, was filed, but however, vide order dated 31.07.2019, the said application was allowed, only qua defendant No.1, that too, subject to the payment of Rs.1000/- as costs. It was thereafter, an application (Annexure P-6) was filed for recalling of the order by petitioners-defendants No.2 to 4 and this application was dismissed, vide

impugned order dated 24.08.2022, which is Annexure P-8.

From the material coming on record, it is evident that only opportunity was given to the present petitioners to file written statement. In the application dated 05.09.2018, which was filed at the behest of Baba Kabal Singh, who is proforma respondent No.6-defendant No.1, in the present petition, there is specific mention made in paragraph No.2 of the application that the counsel for defendants No.2 to 4 i.e. present petitioners, is suffering from illness and asked the counsel named below, i.e. of defendant No.1-proforma respondent No.6, to make request, to seek adjournment from the Court. However, in the order dated 31.07.2019 (Annexure -5), there is though mention made of the filing of the application, at the behest of applicant-defendant No.1 i.e. Baba Kabal Singh, but there is no mention made, vis-a-vis, recitals of paragraph No.2 of the application, which states about making of a request for adjournment, at the behest of counsel for the present petitioners, as he was suffering from illness. It was only qua defendant No.1, that the impugned order dated 05.09.2018 was recalled.

Furthermore, it is pertinent to mention that in Annexure P-6, which is a subsequent application, filed at the behest of petitioners, for seeking recall of the order of striking off the defence against them, there is specific mention made about the counsel for the defendants No.2 to 4, not to be present in the Court, as he was suffering from illness, which fact, though, is denied by learned counsel for respondents No.2 and 3. But however, this fact, gains strength from the recitals of the application filed on 05.09.2018, which is Annexure P-4, where, there is specific mention

made in paragraph No.2, about the counsel for defendants No.2 to 4, to be suffering from illness.

No doubt, there is delay in filing of the written statement and reply, but however, fact remains that only one opportunity had been given to file the written statement and reply. On query by the Court, it has been disclosed by both learned counsel that the case has not made any progress till date. The evidence of the plaintiff has yet not started.

In the given circumstances, more particularly, looking at the stage of the case, the impugned order dated 05.09.2018, is set aside qua petitioners-defendants No.2 to 4 also and petitioners are given only one opportunity to file the written statement/reply before the Court below, on the next date of hearing, which is stated to be 23.02.2023

Accordingly, the present petition stands disposed of.

February 16, 2023
Vgulati

(ARCHANA PURI)
JUDGE

Whether speaking/reasoned
Whether reportable

Yes
Yes/No