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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

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Civil Revision No. 6088-2022

Date of decision: 12.01.2023

Preet Rupinder Singh and others

.....*Petitioners*

versus

Tarsem Kumar Gupta

.....*Respondent*

Coram: Hon'ble Mr. Justice Rajbir Sehrawat

-. -

Present: Mr. Rakesh Sobti, Advocate and
Mr. Jaskirat Singh Arora, Advocate
for the petitioner

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Rajbir Sehrawat, J. (Oral)

The present revision petition has been filed by the petitioners under Article 227 of the Constitution of India, praying for setting aside the impugned order dated 12.10.2022 (Annexure P-9), passed by the Civil Judge (JD), Bathinda, allowing the application filed by the respondent/plaintiff for striking off the defence of the petitioners/defendants.

The facts involved in the present case are that respondent/plaintiff filed a suit for permanent injunction against petitioners No. 2 and 3/defendants, who are the NRIs and residing abroad. Notice was issued in the said suit and in the stay application. Petitioner No. 1 was appointed by the petitioners No. 2 and 3 as their power of attorney to take care of the suit. Accordingly, petitioner No. 1 engaged the counsel to represent petitioners No. 2 and 3/defendants in the suit. Thereafter, the case

was repeatedly adjourned from 12.04.2022 to 22.08.2022. However, no written statement was filed on behalf of petitioners No. 2 and 3/defendants. As a result, the respondent/plaintiff filed an application for striking off of the defence of the petitioners/defendants in the said suit. Accordingly, the trial Court, vide order dated 12.10.2022 (Annexure P-9) has allowed the application of the plaintiff, striking of the defence of the petitioners/defendants. Now, the petitioners have challenged the said order in the present revision petition.

Arguing the case, counsel for the petitioners has submitted that the delay in filing the written statement was not intentional. In fact, petitioner No. 1, who is appointed as power of attorney by petitioners No. 2 and 3, to take care of the case, remained admitted in the drug-de-addiction and rehabilitation centre being run by the Baba Fateh Singh Sewa Welfare Society (Regd.) Mudki, Ferozepur. After having been relieved from the said Centre, petitioner No. 1 inquired about the suit and he came to know that the defence of the petitioners had already been struck off by the trial Court. Counsel has submitted that since the petitioners are the main contesting defendants in the suit, therefore, if the impugned order is not set aside, then the case of the petitioners would be seriously prejudiced. Hence, the petitioners deserve to be granted, at least, one opportunity to file written statement and to contest the suit accordingly.

Having heard counsel for the petitioners and having perused the case file, this Court finds that the trial Court has granted several opportunities to the petitioners to file written statement. Despite that, the petitioners did not avail the said opportunities granted for that purpose.

Therefore, the trial Court has passed the impugned order, striking off the defence of the petitioners. Hence, there does not appear to be any *ex-facie* illegality and impropriety in the order passed by the trial Court. However, it would not be appropriate to lose sight of the fact that petitioners No. 2 and 3, who are the actual defendants in the suit, are Non-Resident Indians and, undisputedly, they deputed petitioner No. 1 as their power of attorney to take care of the suit against them. Petitioner No. 1 had, infact, engaged the advocate to prosecute the case on behalf of the defendants. Therefore, *per se*, intention to avoid the Court process on behalf of the petitioners does not appear to be there. Still further, the material placed on record before this Court shows that petitioner No. 1, *i.e.* power of attorney of petitioners No. 2 and 3/defendants, remain admitted in the drug de-addiction centre during the duration when the written statement was not filed. Therefore, it appears that the delay in filing the written statement was not intentional on the part of the petitioners, rather that had occurred due to the unavailing circumstances which were beyond the control of petitioner No. 1. Otherwise also, the Rules of procedure are handmade to advance interest of substantial justice and not to thwart or obstruct the same. Therefore, it would not be inappropriate if the petitioners are granted, at least, one opportunity to file their written statement and to contest the suit accordingly; but by putting them under an appropriate financial burden.

In view of the above, the present petition is allowed and the impugned order dated 12.10.2022 passed by the Civil Judge (Junior Division) Bathinda (Annexure P-9), is set aside to the extent of striking off the defence of the petitioners/defendants and the trial Court is directed to

grant one effective opportunity to the petitioners/defendants to file their written statement and thereafter, to contest the suit, however, subject to payment of Rs.5,000/- as costs, to be paid to the respondent/plaintiff on or before the next date of hearing fixed before the trial Court.

It is, however, clarified that the said opportunity shall not be granted to the petitioners if they do not pay the costs of Rs.5,000/- to the plaintiff on or before the next date fixed before the trial Court.

(Rajbir Sehrawat)
Judge

January 12, 2023
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No