

117.

2023:PHHC:162234

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

CR-7636-2023

Date of decision: 18.12.2023

ANITA BALI AND ANR

.... Petitioners

Versus

VED PARKSH BALI

.... Respondent

CORAM: HON'BLE MR. JUSTICE GURBIR SINGH

Present: Mr. Amit Choudhary, Advocate, for the petitioners.

GURBIR SINGH, J. (Oral)

1. Prayer in this revision petition filed under Article 227 of the Constitution of India read with Section 151 CPC is for setting aside the order dated 15.11.2023 (Annexure P-1) passed by learned Civil Judge (Junior Division), Faridabad, whereby defence of the petitioners-defendants has been struck off by court order.

2. The brief facts, as culled out from the petition, are that the respondent-plaintiff (hereinafter called, "plaintiff") has filed a suit for mandatory/permanent injunction directing the petitioners-defendants (hereinafter called, "defendants") to hand over vacant possession of House No.408, Sector 31, Faridabad and also sought recovery of damages/mesne profits/compensation. An application under Order 39 Rule 1 and 2 read with Section 151 CPC was also filed. Though the defendants appeared but desite availing numerous opportunities, written statement and reply to the stay application was not filed. Hence, vide order dated 15.11.2023, their defence was struck off.

3. Learned counsel for the petitioners submits that it was due to some communication gap with the trial Court counsel, they could not file reply and their defence was struck off. By way of present revision petition, they have prayed for grant of one effective opportunity to file reply to the suit as well as to the stay application.

4. Though there is some inaction on the part of the petitioners-defendants that despite availing seven effective opportunities, they failed to file reply, but keeping in view the fact that procedure is handmaid to the administration of justice and it is meant for advancement of justice, the petitioners should not be non-suited merely on procedural technicalities and no prejudice would be caused to the respondent-plaintiff if one opportunity is given to the petitioners-defendants as he can be compensated with costs, so the impugned order deserves to be set aside.

5. Notice of this petition is not being issued to the respondents, as it may linger on the case and may cause financial burden on them.

6. In view of above, the order dated 15.11.2023 (Annexure P-1) is hereby set aside and one opportunity is granted to the petitioners-defendants to file reply to the suit as well as to the stay application, however, that would be subject to payment of costs of Rs.15,000/- , out of which, Rs.5,000/- shall be deposited with the concerned District Legal Services Authority and Rs.10,000/- to be paid to the respondent-plaintiff. The petitioners-defendants shall file reply to the suit as well as to the stay application on the date so fixed before the trial Court. In case of default, this order shall automatically stand vacated.

7. Present petition stands disposed of accordingly.
8. If the respondent-plaintiff is not satisfied with this order, he can move an application for recalling of this order within 30 days.

(GURBIR SINGH)
JUDGE

December 18, 2023
sanjeev

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