

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

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CRM-M-863-2024 (O&M)
Date of decision: 15.01.2024

Dr. Anuj Kumar and others

...Petitioners

Versus

Priyanka

...Respondent

CORAM: HON'BLE MRS. JUSTICE MANISHA BATRA

Present:- Mr. Namit Gautam, Advocate
for the petitioners.

MANISHA BATRA, J. (Oral)

1. The present petition has been filed under Section 482 Cr.P.C. by the petitioners for setting aside the order dated 14.08.2023 (Annexure P-3), passed by the trial Court in criminal complaint bearing No. COMA-1536-2022, titled as ***Priyanka vs. Dr. Anuj Kumar etc.***, whereby the defence of the petitioners have been struck off by order for not filing written statement in the aforesaid complaint filed under Section 12 read with 16, 17, 18, 19, 20, 22, 23 and 24 of the Protection of Women from Domestic Violence Act, 2005 (*for short 'DV Act'*).

2. Brief facts of the case relevant for the purpose of disposal of the present are that the aforesaid complaint/application has been filed by the respondent against the petitioners and four other accused under the provisions of DV Act. Notice of the complaint was issued to petitioners and others for 07.01.2023. Since on 07.01.2023, the report of the CDPO was not received, fresh notice was issued for 22.03.2023. On 22.03.2023, the petitioners caused their appearance through their counsel and on their request; the case was adjourned to 03.06.2023 for filing written statement. Since the remaining

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respondents/accused were not served, fresh notices were issued to them for the said date. Even on 03.06.2023, remaining respondents remained unserved and the written statement was not filed. The matter was then adjourned to 14.08.2023. On failure of the petitioners to file written statement even on 14.08.2023, their defence was struck off by the Court by passing the impugned order.

3. Learned counsel for the petitioners submits that due to ill health of respondent Nos. 2 and 3, who are aged about 79 years and are suffering from several age related health problems, they could not file their written statement, consequent to which, their defence has been struck off by the Court, vide impugned order dated 14.08.2023. He has argued that it is settled law that the right to lead defence evidence is an important right given to an accused and the trial Court should not have been hyper-technical in striking off the defence of the petitioners. Hence, it is prayed that the petitioners may be granted one opportunity to file their written statement by setting aside the impugned order.

4. I have heard learned counsel for the petitioners and have also perused the material placed on record.

5. The petitioners have been arrayed as respondent Nos. 1 and 3 in the aforementioned complaint filed by the respondent. They had put in appearance before the trial Court through their counsel and had sought time to file written statement but they could not do so and consequently, the trial Court had struck off their defence by passing the impugned order dated 14.08.2023. The reason given by the petitioners is that since petitioner Nos. 2 and 3 were not maintaining good health, written statement could not be filed on the date so fixed. A perusal of the impugned order shows that remaining

respondents were not yet served and they were still unrepresented before the trial Court. It is well settled proposition of law that no party should be condemned unheard. The primary duty of the Court is to reach as close to the truth as possible by obtaining proper proof of such facts which would lead to a just and correct decision of the case, which cannot be done without giving an opportunity to the petitioners to file their written statement. The Courts are under legal obligation to make every possible effort, in the given fact situation of each case, to reach the truth so as to enable itself to arrive at a just decision for achieving the laudable object of doing substantial justice between the parties. The above conduct of the petitioners is certainly indicative that they have been negligent in pursuing their case. However, the negligence of the petitioners is not of the kind which would leave them with such consequence, as the fact of respondent Nos. 2 and 3 not maintaining good health cannot be ruled out keeping in view their age. Hence, this Court is of the considered opinion that the present petition deserves to be allowed.

6. Accordingly, the present petition is allowed. The impugned order dated 14.08.2023 is hereby set aside. The trial Court is directed to accord one more opportunity to the petitioners to file their written statement.

7. This order, however, will be subject to payment of costs of Rs. 5,000/-, to be deposited by the petitioners with the District Legal Services Authority, concerned.

15.01.2024
Waseem Ansari

(MANISHA BATRA)
JUDGE