



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 3682 of 2024 (O&M)
Date of Decision: 08.07.2024

Balbir and another
..... Petitioners

Versus

Rajender and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Sandeep Yadav, Advocate
for the petitioners-defendant Nos. 2 & 3 (i) to (vi).

HARKESH MANUJA, J. (ORAL)

The petitioners-defendant Nos. 2 & 3 (i) to (vi), by way of present revision petition, seeks setting aside of the order dated 16.04.2024 (Annexure P-2) passed by learned Additional Civil Judge (Senior Division) / Sub Divisional Judicial Magistrate, Meham (**hereinafter to be referred as “trial Court”**), in Civil Suit No. 187 of 2017, titled **“Rajender Versus Sat Narayan and others”**, whereby their defence was ordered to be struck off due to non-filing of written statement.

[2] Respondent No. 1-plaintiff filed a suit for possession with consequential relief of permanent injunction on 23.08.2017. Upon notice, petitioners-defendant Nos. 2 & 3 (i) to (vi) appeared before the trial Court through their counsel on 12.09.2017; however, despite been granted sufficient opportunities, no written statement was filed and resultantly, the defence was ordered to be struck off by the trial Court vide order dated 16.04.2024 (P-2).

[3] Impugning the aforesaid order dated 16.04.2024 passed by the trial Court, learned counsel for the petitioners submits that the petitioners have appeared on each and every date before the Court below and without giving sufficient opportunity, the defence of petitioners has been struck off. He further submits that in the absence of any defence being put-forth by way of filing written statement, the petitioners will not be able to defend the suit in an effective manner which definitely will cause serious prejudice to their rights therein.

[4] After hearing learned counsel for petitioners and gone through the paper-book as well as the zimni orders passed by the trial Court, which have been annexed with the petition at Annexure P-3 (colly), I find substance in the submissions made on behalf of the petitioners.

[5] In the present case, the suit was filed on behalf of plaintiff-respondent No. 1 on 23.08.2017, wherein the petitioners-defendants appeared on 12.09.2017 and thereafter filed an application under Order 7 Rule 11 CPC for rejection of plaint on 19.09.2017. In the said application, reply was filed on behalf of plaintiff-respondent No. 1 on 03.04.2018, which came to be finally decided on 02.05.2023. Still further, an amendment in the plaint was carried on behalf plaintiff-respondent No. 1 and the amended plaint was presented before the trial Court on 17.10.2023 and thereafter, the defence of petitioners-defendants was struck off on 16.04.2024. In such circumstances, the entire delay about the proceedings in the suit cannot be solely attributed to the petitioners-defendants.

In the humble opinion of this Court, in case the impugned order is allowed to stand and the petitioners are deprived of their rights to

file written statement, they will not be able to put-forth their defence to the case set up by respondent No. 1-plaintiff in the suit. Though, there appears to be lack of due diligence on the part of petitioners, while contesting the suit, however, considering the fact that ever since the passing of impugned order, the proceedings in the suit have not moved further, as such, it would be in the interest of justice to grant one effective opportunity to the petitioners, so as to file written statement in order to protect their substantial rights involved in the suit.

[6] Even the Hon'ble Supreme Court in *“Kailash Vs. Nanhku and ors.”*, 2005 (2) RCR (Civil) 379, while considering the provisions of Order VIII Rule 1 CPC, has held that the same being part of procedural law and hence directory in nature. Still further, keeping in view the substantial justice, the Hon'ble Supreme Court under somewhat similar circumstances in *“Siddalingayya Vs. Gurulingappa and ors.”*, 2018 (1) RCR (Civil) 543, upheld the opportunity of filing written statement granted by the High Court. Even otherwise, upholding of the impugned order will cause serious prejudice to the rights of petitioners as they will not be able to contest the case set up by respondent No. 1-plaintiff.

[7] Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is **allowed**. Impugned order dated 16.04.2024 (P-2) passed by the trial Court, is ordered to be set aside, **thereby granting one effective opportunity to the defendants** so as to file their written statement on the date fixed before the trial Court, i.e. 09.07.2024 or within one week thereafter.

[8] Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to respondent No. 1-plaintiff, least it may delay the progress of suit instituted at his instance and may also burden him with unnecessary cost towards litigation expenses.

[9] It is made clear that in case, the respondent-plaintiff finds any mis-statement of fact on the part of petitioners, he would be at liberty to approach this Court by moving an appropriate application in this regard.

[10] The aforesaid order shall be subject to payment of costs of Rs.20,000/-, which shall be deposited by the petitioner(s) with the trial Court on the date of filing of written statement, to be disbursed in favour of respondent-plaintiff.

July 08, 2024

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(HARKESH MANUJA)

JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No