



IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH

Civil Revision No. 4040 of 2024 (O&M)
Date of Decision: 22.07.2024

Rattan Singh & Ors.
..... Petitioners

Versus

Bhim Singh and others
..... Respondents

CORAM: HON'BLE MR. JUSTICE HARKESH MANUJA

Present: Mr. Vipul Sharma, Advocate
for the petitioners-defendants.

HARKESH MANUJA, J.

The petitioners-defendants, by way of present revision petition, seeks setting aside of an order dated 04.11.2023 passed by the learned Civil Judge (Senior Division), Sohna (**hereinafter to be referred as “trial Court”**), in Civil Suit No. 163 of 2019, titled “**Bhim Singh and others Versus Rattan Singh and others**”, whereby their defence was struck off due to non-filing of the written statement.

[2] Facts leading to the present case are that the respondents-plaintiffs filed a suit for declaration, besides seeking relief of permanent injunction restraining the petitioners-defendants from dispossessing them from the suit land. Upon notice, petitioner appeared before the trial Court through his counsel on 01.05.2019 (as averred in the petition at para-3); however, despite having been granted sufficient opportunities, no written statement was filed and resultantly, their defence was ordered to be struck off vide order dated 04.11.2023 (P-5).

[3] Impugning the aforesaid order dated 04.11.2023 passed by the trial Court, learned counsel for the petitioners 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 having gone through the paper-book as well as the zimni orders passed by the trial Court, which have been annexed with the petition, I find substance in the submissions made on behalf of the petitioner.

[5] In the humble opinion of this Court, in case the impugned order is allowed to stand and the petitioners are deprived of their right to file written statement, they will not be able to put-forth their defence to the case set up by the respondents-plaintiffs 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 the respondents.

[7] Accordingly by adopting a pragmatic approach; rather than being hyper-technical, the revision petition is **allowed**. Impugned order dated 04.11.2023 (P-5) passed by the trial Court, is ordered to be set aside, **thereby granting one effective opportunity to the petitioners** so as to file their written statement on the date fixed before the trial Court, i.e. 24.07.2024.

[8] Keeping in view the nature of proceedings, the present petition is being decided without issuing notice to the respondents-plaintiffs, least it may delay the progress of suit instituted at their instance and may also burden them with unnecessary costs towards litigation expenses.

[9] It is made clear that in case, the respondents find any mis-statement of fact on the part of petitioners, they 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.40,000/-, which shall be deposited by the petitioners with the trial Court on the date fixed, to be disbursed in favour of respondents-plaintiffs.

July 22, 2024
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(HARKESH MANUJA)
JUDGE

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