



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

128

CR-1085-2025

Date of decision: 20.02.2025

CHAMKAUR SINGH AND OTHERS**...Petitioners****VERSUS****BALWINDER KAUR AND ANOTHER****...Respondents****CORAM : HON'BLE MR. JUSTICE VIKRAM AGGARWAL**

Present: Mr. Ashish Gupta, Advocate
for the petitioners.

VIKRAM AGGARWAL, J.(ORAL)

1. The present revision petition is directed against the order dated 30.07.2024 (Annexure P-3) vide which the defence of the petitioners/defendants was struck off on account of written statement not having been filed.

2. A suit for declaration was filed by the respondents/plaintiffs against the petitioners/defendants to the effect that they were the owners of the land in dispute and the Power of Attorney dated 16.07.2022 executed by late Kulwinder Singh and sale deed dated 01.10.2020 executed by defendant No.1 being the General Attorney of Kulwinder Singh in favour of defendant No.2 regarding the share of Kulwinder Singh was illegal, null and void and not binding on the rights of the respondents/plaintiffs.

3. Upon notice having been issued, the petitioners/defendants put in appearance before the trial Court in November, 2023. Despite having been granted a number of opportunities for filing the written



statement, the same was not filed as a result of which, the defence of the petitioner/defendants was struck off by way of the impugned order leading to the filing of the present revision petition.

4. Learned counsel for the petitioners submits that non-filing of the written statement was on account of the fact that the counsel representing the petitioners had been appointed as Additional District Judge in the State of Punjab and this fact did not come to the notice of the petitioners. By the time, the petitioners came to know about the said fact, the defence of the petitioners had been struck off and upon coming to know about the said fact, the present revision petition was filed.

5. I have considered the submissions made by learned counsel for the petitioners.

6. There would be no necessity of issuing notice to the respondents, for, in view of the nature of the order that is proposed to be passed, no prejudice would be caused to them.

7. As per provisions of Order VIII Rule 1 of the Code of Civil Procedure, 1908 (for short the "CPC"), the written statement is to be filed within a period of 30 days from the date of issuance of summons which is extendable up to 90 days. Order 8 Rule 10 lays down the procedure in case failing to present the written statement. In ***Kailash V/s Nanhku and others, 2005(2) RCR (Civil) 379***, the Supreme Court of India opined that the amendment in Rule 8(1) CPC would not impose an embargo on the power of the Court to extend the time further, as no penal consequences as such have been provided, the provisions being in the domain of the procedural law would not,



therefore, be mandatory. It was held that ordinarily the time schedule should be followed as a rule and departure therefrom would be by way of exception and that such extension of time should not be granted as a matter of routine, especially beyond a period of 90 days. It was held that in case any extension is to be granted, the same could be for the good reasons to be recorded in writing may be in brief. Subsequently, the Supreme Court of India was again seized of this issue in the case of ***R.N. Jadi V/s Subhashchandra, 2007 (3) RCR (Civil) 588***, wherein it was opined that the grant of extension of time beyond 30 days is not automatic. The Supreme Court of India held that the power of the Court has to be exercised with caution and for adequate reasons to be recorded and extension of time beyond 90 days must be granted only based on a clear satisfaction of the justification for granting such extension.

8. Reverting to the facts of the present case, the petitioners put in appearance before the trial Court for the first time in November, 2023. The case was fixed for 28.11.2023 for filing of written statement. However, the same was not filed and the case was adjourned to 05.12.2023. The Court was not held on 05.12.2023 as the Presiding Officer was on earned leave from 05.12.2023 to 06.12.2023. Accordingly, the matter was taken up on 02.01.2024. On 02.01.2024, also the Presiding Officer was on leave, as a result of which, the case was adjourned to 16.01.2024. On 16.01.2024, on a request having been made by learned counsel for the petitioners/defendants, the case was adjourned to 06.02.2024 for filing of written statement. The matter was again not taken up on 06.02.2024 as the Presiding Officer was on leave.



Thereafter, four more opportunities were availed by the petitioners but the written statement was not filed. The reasoning given by learned counsel for the petitioner that their counsel had been appointed Additional District Judge in the State of Punjab and the said fact did not come to their notice, though not fully acceptable, cannot be termed to be false or unreasonable. Even otherwise, matters should be decided on merits and parties should not be rejected on mere technicalities.

9. In view of the above, the present revision petition is allowed. The impugned order dated 30.07.2024 (Annexure P-3) passed by Civil Judge (Junior Division), Patiala vide which defence of petitioners/defendants had been struck off is set aside and the Court concerned is directed to grant one opportunity to the petitioners/defendants to file their written statement within a period of 10 days from today. This shall, however, be subject to the payment of Rs.20,000/- as costs which shall be payable to the plaintiffs.

(VIKRAM AGGARWAL)
JUDGE

February 20, 2025

Nisha Yadav

Whether reasoned/speaking?

Yes/No

Whether reportable?

Yes/No