

(2012) 05 P&H CK 0086

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 2947 of 2012 (O and M)

Balwinder Singh and another

APPELLANT

Vs

Harmandeep Singh and others

RESPONDENT

Date of Decision: May 15, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- Penal Code, 1860 (IPC) - Section 420

Hon'ble Judges: Rajesh Bindal, J

Bench: Single Bench

Advocate: G.N. Malik, for the Appellant;

Judgement

Rajesh Bindal, J.

In the present petition, the challenge is to the order dated 2.4.2012 passed by the learned court below, whereby on account of nonfiling of written statement by the petitioners, their defence was struck off. The proceedings in the present case arise out of a suit filed by respondent no. 1/plaintiff against the petitioners for permanent prohibitory injunction restraining the defendants-petitioners from dispossessing him from the land measuring 4B-1B situated at village Bhullarah, Tehsil Malerkotla, District Sangrur.

2. For the view I am taking in the present petition, I do not deem it appropriate to issue notice to the respondents, as the same would unnecessarily delay not only the disposal of the present petition but also the suit as well.

3. Learned counsel for the petitioners submitted that notice of the suit was issued to the petitioners for 11.4.2011. Along with the suit, the plaintiff had also filed application for interim stay. Counsel on behalf of the petitioners appeared before the court below on 20.4.2011 and filed his power of attorney and the case was adjourned to 7.5.2011. Thereafter on two occasions, the case was adjourned as the Presiding Officer was on leave.

4. Learned counsel for the petitioners further submitted that Parmajeet Kaur mother of respondent nos. 2 to 4 and daughter of petitioner no. 2 was the owner in possession of land measuring 16B-4B. After her death, her husband Pargat Singh illegally got the mutation sanctioned in his favour, which would have been sanctioned in favour of respondent nos. 2 to 4, who are minors and residing with petitioner no. 2. Petitioner no. 2 filed civil suit on behalf of respondent nos. 2 to 4 challenging the sanctioning of mutation in favour of Pargat Singh. The said suit was decreed in favour of respondent nos. 2 to 4. Pargat Singh wants to sell the property. FIR No. 126 dated 24.7.2008 has also been lodged against Pargat Singh and plaintiff Harmandeep Singh u/s 420 IPC. It was submitted that written statement could not be filed in time as the application filed by petitioner no. 2 for appointing him as guardian of respondent nos. 2 to 4 was not decided by the learned court below. Vide impugned order dated 2.4.2012, the learned court below struck off the defence of the petitioners. It was submitted that delay in filing the written statement was not intentional. It was further submitted that evidence of the plaintiff is yet to start. The prayer is that order dated 2.4.2012 striking off defence of the petitioners be set aside and one opportunity be granted to file the written statement. He has relied upon judgments of Hon"ble the Supreme Court in [Kailash Vs. Nanhku and Others](#), [Salem Advocate Bar Association, Tamil Nadu Vs. Union of India \(UOI\)](#), and [R.N. Jadi and Brothers and Others Vs. Subhashchandra](#), to submit that Order VIII Rule 1 of the CPC has been held to be directory in nature and not mandatory.

5. After hearing learned counsel for the petitioners, I find merit in the contentions raised by him. It has been consistently opined by Hon"ble the Supreme Court in the judgments, referred to above, that Order VIII Rule 1 of the CPC which provides time for filing of written statement is directory in nature in case sufficient cause is shown for its nonfiling in time.

6. Considering the aforesaid facts, I deem it appropriate to grant one opportunity to the petitioners to file written statement. Accordingly, the petitioners are permitted to file written statement before the learned court below with a copy to counsel for the respondents/ plaintiff. The petition stands disposed of accordingly.