

(2010) 08 P&H CK 0371

High Court Of Punjab And Haryana At Chandigarh

Case No: None

Ranvir Singh

APPELLANT

Vs

Attar Singh and Others

RESPONDENT

Date of Decision: Aug. 11, 2010

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1
- Constitution of India, 1950 - Article 227

Hon'ble Judges: L.N. Mittal, J

Bench: Single Bench

Final Decision: Allowed

Judgement

L.N. Mittal, J.

Ranvir Singh - defendant No. 3 has filed the instant revision petition under Article 227 of the Constitution of India impugning order dated 23.08.2008 (Annexure P-1) passed by learned Civil Judge (Junior Division), Charkhi Dadri, thereby precluding defendant no.3-petitioner from filing written statement and also impugning order dated 19.07.2010 (Annexure P-2) passed by the same Court, thereby dismissing petitioner's application for recall of order Annexure P-1.

2. I have heard learned counsel for the petitioner and perused the case file.

3. Learned Counsel for the petitioner states that the case is now fixed in the trial court for 08.10.2010 for arguments on stay application. It is also stated that issues have not yet been framed. It is also contended that application for recall of order dated 23.08.2008 (Annexure P-1) was moved on 05.09.2008 on the ground that on 23.08.2008, original counsel for defendant no. 3 could not appear on account of death of a relative on the same day, as evidenced by Death Certificate (Ex.P-3) and affidavit (Ex.P-4) of the counsel in the lower court. It is prayed that only one more opportunity may be granted to the petitioner to file written statement on payment of cost.

4. I have carefully considered the aforesaid contention.

5. Perusal of impugned order (Annexure P-1) reveals that defendant No. 3 put in appearance for the first time through counsel in the trial court on 05.11.2007, but failed to file written statement till 23.08.2008 in spite of availing almost six effective opportunities. Under Order 8 Rule 1 of the Code of Civil Procedure, written statement has to be filed within 30 days from the date of service of summons, but the defendant may be permitted to file the written statement, for reasons to be recorded, within further period not exceeding 90 days from the date of service of summons. However, the aforesaid provision has been held to be directory and not mandatory being procedural provision. At the same time, this salutary provision has been made in the Code by amendment to curtail delay in disposal of suits. The provision, although directory, is not required to be followed with complete breach either.

6. In the instant case, defendant No. 3-petitioner failed to file written statement for 91/2 months after putting in appearance in the trial court, whereas maximum limit is of 90 days under the aforesaid provision. However, on 23.08.2008, the date of passing of impugned order Annexure P-1, original counsel for defendant no. 3 could not appear on account of death of his relative and his proxy counsel put in appearance and prayed for adjournment. In these circumstances, one more opportunity could be granted by the trial court on payment of some cost.

7. It may be added that application moved by defendant No. 3 for recall of order Annexure P-1 has been decided after more than 01 year and 10 months vide impugned order Annexure P-2 and the very purpose of passing impugned order Annexure P-1 has been defeated because there has been longer delay in the progress of the suit than the delay which would have occurred by granting one more short adjournment on 23.08.2008 to defendant no. 3 for filing the written statement. Moreover, even issues have not yet been framed in the suit and therefore, in my considered opinion, ends of justice would be met if the petitioner is granted another opportunity to file written statement in the trial court on payment of cost. It would not result in any delay in the progress of the suit.

8. I intend to dispose of the instant revision petition without issuing notice to the plaintiff-respondent No. 1 so as to avoid further delay in disposal of the suit and also to save respondent no. 1 of the expenses he may have to incur if notice of the instant revision petition is issued to him.

9. For the reasons recorded herein above, the instant revision petition is allowed and impugned orders Annexures P-1 and P-2 passed by the trial court are set aside and defendant no. 3-petitioner is permitted to file written statement in the trial court on or before 08.10.2010 - the next date said to be fixed in the trial court, subject to payment of Rs. 5,000/- as cost precedent, payable to plaintiff-respondent No. 1.