

(2013) 10 P&H CK 0280

High Court Of Punjab And Haryana At Chandigarh

Case No: Civil Revision No. 3379 of 2010

Sohan Lal Jhanji and Another

APPELLANT

Vs

Rekha Jhanji Brar and Others

RESPONDENT

Date of Decision: Oct. 24, 2013

Citation: (2014) 174 PLR 165

Hon'ble Judges: Paramjit Singh Patwalia, J

Bench: Single Bench

Judgement

Paramjeet Singh, J.

Instant civil revision has been filed under Articles 226/227 of the Constitution of India for setting aside the order dated 03.05.2010 passed by learned Civil Judge (Jr. Divn.) Jagraon whereby suit filed by the petitioners-plaintiffs has been dismissed due to non-filing of amended plaint despite availing eight effective opportunities spreading over a period of six months. I have heard learned counsel for the parties and perused the record.

2. Learned counsel for the petitioners contends that delay in filing the amended plaint was not intentional, rather due to peculiar circumstances beyond their control, as the Court at Jagraon remained closed for paying homage to judicial officer Sh. P.K. Goel and his wife, who were murdered on 03.05.1992. Be that as it may, the fact remains that the application for amendment of plaint was allowed by the trial Court vide order dated 21.10.2009 and subsequently vide order dated 18.03.2010 passed by this Court, the order dated 21.10.2009 was modified and amendment was allowed to a limited extent.

3. On the other hand, learned senior counsel for respondent No. 1 contends that one of the petitioners is an advocate and he was required to be more vigilant in placing on record the amended plaint. The petitioners are not rustic villagers and they were aware of the consequences.

4. I have considered the rival contentions of learned counsel for the parties.

5. Once the amendment has been allowed merely on technicalities viz. delay, nonpayment of costs, the substantive rights of the petitioners cannot be curtailed. It is worthwhile to mention here that vide receipt No. 65 dated 20.05.2010 (Annexure P-9), costs have already been paid. Only amended plaint is required to be placed on record. No prejudice is likely to be caused to respondent No. 1, as at the most, the resultant delay in disposal of suit will effect the petitioners-plaintiffs. Otherwise also, the impugned order is perverse, because the suit could not have been dismissed even if amended plaint was not placed on record it should have proceeded on the original plaint. Keeping in view the above and in the interest of justice, this court deems it fit and appropriate that it would be proper to grant one effective opportunity to the petitioners to place on record the amended plaint, subject to costs of Rs. 10,000/- (Rs. 8,000/- to be deposited with District Legal Services Authority and Rs. 2,000/- to be paid to respondent No. 1). In view of above, the impugned order dated 03.05.2010 is set aside and the suit is restored to its original number. The instant revision is disposed of in the aforementioned terms. The parties through their counsel are directed to appear before the trial Court on 16.12.2013. The petitioners-plaintiffs shall present the amended plaint before the trial Court on that date. The trial Court shall issue notices to unrepresented defendants before this Court and thereafter shall proceed in accordance with law.