

In the Court of Dr.Parvinder Singh Arora, Senior Civil Judge Shimla, H.P.

CMA No. 290/2019.

HPSH120005502019.

Date of Presentation: 14.01.2019.

Date of Institution: 14.01.2019.

Date of Decision : 20.04.2019.

CMA No. 226-6 of 18.

HPSH120033272018.

CMA No. 9004788/2018.

Date of Presentation: 28.11.2018.

Date of Institution: 28.11.2018.

Date of Decision : 20.04.2019.

Sulajeet Singh and others vs. Kanshi Ram and others.

Present: Sh.Umesh,Adv.vice Sh.Pradeep Verma,Adv.for
the plaintiffs.

Sh.D.P.Chauhan,Adv.for the defendants.

This order shall jointly dispose off an application filed by the plaintiff under Section 148 read with Section 151 of CPC for striking off the defence of the defendants from filing the written statement; as well as another application filed by the defendants under similar provision of law for enlargement of time to file the written statement.

2. It is submitted by the plaintiff that the suit was filed in the month of August 2017 and the defendants were served for 15.08.2017, whereafter they put appearance through their counsel. But the defendants did not file written statement within prescribed period of law. They have filed a reply to the application under Order 39 rule 1 and 2 CPC. The defendant kept on seeking adjournment for filing written statement. In the meanwhile the case was transferred from Ld.Civil Judge Court No.2 Rohru to the present Court. The defendants kept on seeking adjournments so as to linger on the matter and

therefore, opportunity to file written statement be closed and the defence of defendants be struck off.

3. In response to the said application the defendants have filed reply alongwith an application under Section 148 read with Section 151 of CPC seeking enlargement of time to file written statement. It is submitted that they were represented by an Advocate Sh.Bharat Bhushan on 19.08.2017 who filed Memo of Appearance, and then on 21.08.2017 placed on record G.P.A. authorizing him to appear on behalf of all the defendants. He had also informed the Ld.Court at bar that an application under Section 24 of CPC is being filed before Ld.District & Sessions Judge Shimla for transfer of the case and for these reasons the case was adjourned to 05.10.2017 for further orders. The application for transfer was disposed off by the Ld. District & Sessions Judge Shimla on 24.05.2018, whereafter the matter was assigned to the present court. Even on 15.01.2018 the Ld.Civil Judge Court No.2 Rohru, while initiating proceedings under Section 228 of IPC had made a reference to the Ld.District & Sessions Judge Shimla for transfer of the case. Hence, the defendants were pursuing their case without any legal advise, moreso in view of the fact that none from the Rohru Bar came forward to defend the defendants as the plaintiff No.2 is a practicing Advocate at Rohru. There was no willful default on the part of the defendants in not filing the written statement within the prescribed period, rather they had already informed the Ld.Court that steps are being taken up for transfer of the matter.

4. The averments of the application filed by the defendants under Section 148 read with Section 151 of CPC are similar to their reply. Even the reply filed by the plaintiff to the application moved by the defendants under Section 148

read with Section 151 of CPC is similar to the averments in the application. It is submitted that a counsel is appearing on behalf of the defendants since 22.09.20018 i.e. after transfer to the case, but despite that no written statement was filed in the court. Further submitted that the plaintiffs have been suffering litigation for a period more than one and half years. Also submitted that no reasonable ground has been mentioned by the defendant for seeking extension of time.

5. Perused case file carefully. The plaintiff had filed the present suit before the Ld.Civil Judge Court No.2 Rohru and the defendants were summoned for 19.08.2017. The record reveals that on 19.08.2017 Advocate Sh.Bharat Bhushan appeared for the defendants by filing Memo of Appearance and case was adjourned to 21.08.2017 for filing P.O.A. and reply. On 21.08.2017 Sh.Bharat Bhushan appeared for defendants on the strength of GPA and stated at the bar that the defendants intend to move an application under Section 24 CPC for transfer of the case. Thereafter, the case was listed for further orders. The case file was received in this court on 23.06.2018 after the disposal of transfer application by the Ld.District & Sessions Judge. On the said date P.O.A. was filed on behalf of the defendants by Advocate Sh.D.P.Chauhan. Since, the plaintiffs were not present on the said date, therefore, the case was listed for notice to plaintiffs for 24.08.2018, whereafter it was listed for filing of written statement by the defendants. Vide order dated 28.11.2018, it was observed that written statement has already been filed by the defendants on 25.09.2018. On the same date, the plaintiffs moved the present application under Section 148 read with Section 151 CPC. The defendants filed reply to the said application on 14.01.2019 and also filed an application under

Section 148 read with Section 151 CPC seeking enlargement of time for filing of the written statement.

6. Record also reveals that the GPA of the defendants Sh.Bharat Bhushan had filed a reply to the application under Order 39 rule 1 and 2 CPC on 21.08.2017 thereby disclosing intention to contest the matter.

7. It is evident from the record that the defendants had put appearance before the court of Ld.Civil Judge Court No.2 Rohru and disclosed their intention to move an application for transfer of the case, and in fact such application was moved and the matter was transferred and assigned to the present court. It also reveals that during the time when the matter was being heard by the Ld.Civil Judge Court No.2 Rohru, no Advocate was engaged by the defendants and they appeared in person. It is the plea of the defendants that since the plaintiff No.2 is a practicing Advocate at Rohru, therefore, none appeared on their behalf and they were forced to move a transfer application. Admittedly, no effective order was passed by Ld.Civil Judge Court No.2 Rohru when the transfer application was pending before the Ld. District & Sessions Judge Shimla, H.P. As per the record an Advocate appeared on behalf of the defendants only on 23.06.2018 and the written statement was filed on 25.09.2018.

8. Admittedly, there is a long delay in filing of the written statement, but in view of the aforesaid facts and circumstances of the case, I find that there was no intentional delay on part of the defendants to file written statement. Rather it reveals that the defendants were pursuing application for transfer of the case and as soon as the transfer order was passed, they engaged counsel who filed the written statement on 25.09.2018. It further reveals that the plaintiffs have not

suffered any prejudice on account of late filing of the written statement as the defendants had already filed a reply to the application under Order 39 rule 1 and 2 CPC, thereby disclosing their defence as well as intention to contest the matter. In this view of the matter, I am of the considered view that there is no intentional delay on part of the defendants to file the written statement on 25.09.2018 and accordingly, the prayer of the defendants to enlarge the time for filing of the written statement beyond prescribed period from their service, is allowed and the written statement filed by the defendants is taken on record. Also in view of the same, the application filed by the plaintiffs for striking off the defence of the defendants is dismissed. Applications after doing needful be tagged with the main case file.

Now, to come up for filing replication on
16.05.2019.

Announced.
20.04.2019

(Dr.Parvinder Singh Arora)
Senior Civil Judge Shimla, H.P.