

(1996) 05 P&H CK 0143
In the Punjab And Haryana At Chandigarh
Case No : Civil Revision No. 119 of 1996

State of Punjab

APPELLANT

Vs

Sohan Singh

RESPONDENT

Date of Decision : 10-05-1996

Acts Referred:

Citation : (1996) 3 RCR(Civil) 504

Hon'ble Judges : N.C.Jain, J

Advocate : Mr. S.K. Sharma, DAG, Punjab., Advocates for appearing Parties

Judgement

N.C. Jain, J.

1. This judgment of mine would dispose of Civil Revisions No. 119 and 120 of 1996, as common question of law has arisen in both the cases. Counsel for the petitioner at the very outset has submitted that the facts of the case be taken from Civil Revision No. 119 of 1996, State of Punjab v. Sohan, 1996(3) R.C.R. (Civil) 504. I am accordingly picking up the facts of the case from the aforementioned civil revision.

2. The plaintiffrespondents filed a suit for declaration to the effect that the order passed by Joint Secretary, Food and Supplies Department, Punjab, Chandigarh dated 25.3.1994 imposing penalty of Rs. 2032859 P was illegal, null and void and against the service rules. Notice in the suit was issued to the two defendants i.e. the State of Punjab petitioner No. 1 and Joint Secretary, Food and Supplies Department Punjab, Chandigarh petitioner No. 2. After the appearance was put in by the defendants, they sought time for filing the written statement. The time was initially granted but on 12.10.1995 the defence of the petitioners has been struck off on the ground that more than two months were allowed for filing the written statement and that no time could be extended beyond the aforesaid period as Order 27 Rule 5 of C.P.C. does not permit the extension of time beyond two months. The pointed question of law which has arisen in the present revision petition is whether the trial Court has got a discretion to allow an adjournment even if more than two months have expired or is it that the court is bound to

strike off the defence of the defendants in accordance with the provisions of Order 27 Rule 5 of the Civil Procedure Code. Order 27 Rule 5 of the Civil Procedure Code has been extracted out by me which reads as under:

"The Court, in fixing the day for the Government to answer to the plaint, shall allow a reasonable time for the necessary communication with the Government through the proper channel, and for the issue of instructions to the Government pleader to appear and answer on behalf of the Government and may extend the time at its discretion (but the time so extended shall not exceed two months in the aggregate.)"

The aforesaid provision, in my considered view, does not lay down in any explicit terms that if no written statement is filed within a period of two months, the Government shall stand debarred from filing the written statement. The provision, according to me, means that the Court shall allow a reasonable time for necessary communication with the Government through proper channel and for the issuance of instructions to the Government Pleader to appear on behalf of the Government and such time may be extended at its discretion but the same shall not be extended beyond two months. The provision on the face of it vests the powers in the Court to grant a reasonable time which is necessary for the communication with the Government but it does not mean that the written statement has to be filed within a period of two months. The aforementioned provision does not pertain to the filing of the written statement. The filing of the written statement in my considered view is governed by the provisions of Order 8 Rule 1 of the Code of Civil Procedure and the said provision does not contemplate the grant of maximum time. While interpreting the Order 27 Rule 5 and Order 8 Rule 1 of the Code of Civil Procedure, it has been held by a Division Bench of the Allahabad High Court in State of U.P. and another v. Dharam Singh Mahra, A.I.R. 1983 Allahabad 130 that the words `to appear and answer" do not mean the presentation of a written statement and that the Court has jurisdiction to grant time for filing such statement beyond a period of two months. It has further been held that as the litigation on behalf of the Government is to be carried out in a different manner than on behalf of individuals, the provisions of Order 8 Rule 1 of the Code of Civil Procedure have not been incorporated in Order 27 Rule 5 of the Code of Civil Procedure and that the Court has jurisdiction to extend the time for filing the written statement beyond a period of two months.

3. For the reasons recorded above, the revision petitions are allowed. The impugned orders are set aside. The trial Court is directed to proceed with the suit after obtaining the written statement from the petitioners which would be subject to payment of cost of Rs. 100/ in each case. Since the defendants have chosen not to appear before this Court, the trial Court would ensure their presence before proceedings with the suit.

The petitioners through their counsel are directed to appear before the trial Court on 27.7.1996 for further proceedings.