

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No.3738 of 2016

Date of Decision: 23.11.2016

Gram Panchayat village Patto Kalan

.....Petitioner

Vs

Dayal Singh and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. Amit Dhawan, Advocate
for the petitioner.

Mr. Harsh Bunker, Advocate
for respondent Nos.1 to 4.

RAJ MOHAN SINGH, J.

[1]. Petitioner-Gram Panchayat has filed this revision petition, challenging the order dated 18.04.2016 passed by Civil Judge (Jr. Divn.), Nakodar, whereby defence of the petitioner/defendant No.1 was struck off for non-filing of the written statement within a period of 90 days.

[2]. Brief facts are that the Respondent/plaintiffs filed a suit for declaration against Gram Panchayat and *Jumla Mustarka Malkan* of village Patto Kalan to the effect that plaintiffs being co-sharers in possession along with other proprietors were owners in possession of the suit property. Petitioner-Gram

Panchayat appeared in the trial Court on 18.02.2016. Service *qua* defendant No.2 was incomplete. Plaintiffs were directed to file correct address of defendant No.2 within five days and the case was adjourned for 04.03.2016.

[3]. On 04.03.2016, it was noticed by the trial Court that correct address of defendant No.2 was not filed, however the same was filed in the Court. Notice *qua* defendant No.2 was ordered to be issued for 04.04.2016. Non-filing of written statement by defendant No.1 was noticed and it was ordered that the same be filed on the date fixed.

[4]. On 04.04.2016, the summons issued to defendant No.2 were received back unserved. Trial Court was satisfied that defendant No.2 could not be served by means of ordinary process and defendant No.2 was ordered to be served through *munadi* and affixation for 18.04.2016. Written statement on behalf of defendant No.1 was also ordered to be filed on or before the date fixed.

[5]. On 18.04.2016, it was noticed by the trial Court that *munadi* fee for summoning defendant No.2 was not deposited by the plaintiffs. Plaintiffs were directed to furnish the requisite fee and thereafter defendant No.2 was ordered to be served through the process of *munadi*. Since the written statement on

behalf of defendant No.1 was not filed within a period of 90 days, therefore, defence of the defendant No.1/petitioner was struck off and the case was adjourned for completing service *qua* defendant No.2 by means of *munadi* process.

[6]. Learned counsel for the petitioner contended that since the case was fixed for service of unserved defendant, therefore, the petitioner/defendant No.1 was under impression that the written statement can be filed on completion of service of defendant No.2. Keeping in view the nature of land, the respective stand of the defendant was necessary to be co-related.

[7]. Learned counsel for the petitioner relied upon the observations made in **Kailash vs. Nanhku & Ors., 2005(2) RCR (Civil) 379** to contend that the provisions in terms of Order 8 Rule 1 CPC has to be construed as directory and in exceptional cases Court can extend the time for filing written statement by recording satisfaction. Even the defendant can be put to terms including imposition of cost. The parameter on which discretion has to be exercised is based on the conduct of the defaulting party.

[8]. Learned counsel for the petitioner further contended that perusal of orders dated 18.02.2016, 04.03.2016,

04.04.2016 and 18.04.2016 passed by the trial Court would reveal that service *qua* defendant No.2 was incomplete for which the trial Court resorted to necessary proceedings including the service through the process of *munadi* and affixation. Major part of the aforementioned orders were devoted to the exercise to be adopted for serving defendant No.2. Even, though there was reference to the effect that defendant No.1 has not filed the reply, defendant No.1 was under the impression that the reply can be filed alongwith defendant No.2. The conduct was to be co-related in the given situation. The provision was held to be directory, but it has to be construed to be so in the exceptional situations, subject to the satisfaction of the Court in respect of non-existing of laxity or gross negligence on the part of the defaulting party. The provision even if, caused in a mandatory manner, but still the import was held to be directory being a procedural mechanism.

[9]. Learned counsel for the petitioner also relied upon **Sita Ram and Ors. vs. Gurbax Singh and Ors., 2013(4) Law Herald 3436;** **Sukhjinder Singh @ Sukha vs. Shamsher Singh, 2014(2) Law Herald 1762** and **Surinder Mittal vs. Pooja Mittal, 2013(1) Law Herald 24** to the same effect.

[10]. On the other hand, learned counsel for the respondents vehemently opposed the prayer of the petitioner on the strength of observations made by the Hon'ble Apex Court in **Mohammed Yusuf vs. Faij Muhammad & Ors., 2009(1) RCR (Civil) 633.**

[11]. I have considered the submissions made at the Bar.

[12]. The basic litigation between the parties is with regard to vesting or non-vesting of *Jumla Mustarka Malkan* property in the proprietary body. If the petitioner-Gram Panchayat is not given a chance to rebut the claim of the plaintiff/respondents, then the claim of the plaintiffs with regard to *Jumla Mustarka Malkan* land would be unrebutted and the rival claims of the parties would be materially prejudiced. In the villages a big chunk of land is normally available under the heading of *Jumla Mustarka Malkan* and *Digar Haqdaran*. Normally such type of land was reserved during consolidation by applying pro-rata cut on the holdings of the proprietors. Sometimes for utilization of the land towards common purpose of the village community some land is left unutilized. Whether the remaining land can be termed as *Bachat* land or would vest in Panchayat always remained a contentious issue between the Panchayat and the *Malkan* body. Such a contentious issue cannot be thrown away on the basis of omission of the Gram Panchayat of the present time.

[13]. The view expressed in **Kailash's** case (supra) was further approved by the Hon'ble Apex Court in **Sandeep Thapar vs. SME Technologies Private Limited, 2014(1) R.C.R. (Civil) 729** wherein it was held that the provision in terms of Order 8 Rule 1 CPC does not impose any embargo on the powers of the Court to extend time for filing written statement beyond the period of 90 days, of course under exceptional circumstances.

[14]. In **Salem Advocate Bar Association, Tamil Nadu vs. Union of India, AIR 2005 SC 3353** similar proposition was held by the Hon'ble Apex Court with regard to the provision being rule of procedure has to be treated as directory even though the same has been caused in mandatory nature. The provision has to be applied with some flexibility and not with rigidity or inflexibility. Since the rule of procedure is handmaid and is intended to meet ends of justice, therefore, cause of justice cannot be subverted.

[15]. In **Mohammed Yusuf's** case (supra) also the proposition was not disputed, but the discretion of the Court was required to be exercised with clear satisfaction of the justification for granting such extension. There was no dispute with regard to the provision being handmaid and the same can be resorted to in case of extreme hardship and not in routine manner.

[16]. Keeping in view the nature of the orders passed by the trial Court at the summoning stage, this Court is satisfied that one last opportunity can be granted to the Gram Panchyat/petitioner for filing written statement, subject to payment of adequate cost.

[17]. This revision petition is accordingly allowed. Impugned order dated 18.04.2016 passed by the Civil Judge (Jr. Divn.) Nakodar is hereby set aside to the extent of striking off the defence of the defendant No.1/petitioner, subject to the payment of cost of Rs.20,000/- to be paid to the plaintiff/respondents.

[18]. Payment of cost shall be the condition precedent for granting indulgence in favour of the petitioner by the trial Court.

November 23, 2016

Atik

**(RAJ MOHAN SINGH)
JUDGE**

Whether speaking/reasoned Yes / No

Whether reportable Yes / No