

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH.

CR No. 6943 of 2016(O&M)
Date of decision :20.12.2016

Sham Sunder and others

.....Petitioners

Versus

Suraj Parkash and others

.....Respondents

CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH

Present: Mr.A.K.Kansal, Advocate
for the petitioners.

Mr. Ashok Bhardwaj, Advocate
for respondent no.1.

DARSHAN SINGH, J. (Oral)

The present revision petition has been preferred against the order dated 20.09.2016 passed by learned Civil judge (Jr. Division), Jind, whereby the defence of the petitioners(defendants no.1, 2, 11 and 12) has been struck off due to non filing of the written statement as per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, 1908 (for short CPC)

2. I have heard Mr. A.K.Kansal, Advocate, learned counsel for the petitioners, Mr. Ashok Bhardwaj, Advocate, learned counsel for respondent no.1 and have carefully gone through the paper book.

3. Learned counsel for the petitioners contended that the valuable

rights of the petitioners are involved in the present suit. The plaintiffs-respondents have filed the suit for partition of the urban property along with recovery of *mesne* profit. He contended that the petitioners could not file the written statement as the summoning of some of the defendants was yet to be completed. He further contended that the learned trial Court itself vide order dated 08.07.2016 has given the last opportunity to the petitioners to file the written statement. The written statement was filed on the next date fixed by the learned trial Court. But, even then their defence has been struck off. He further contended that the provisions of Order 8 Rule 1 CPC are not mandatory in nature. These are only the rule of procedure and are handmaid of justice. The party should not be denied the opportunity of participating in the process of justice dispensation. He contended that the petitioners have already filed the written statement which was taken on record by the learned trial Court, so the learned trial Court was not justified to struck off the defence. He relied upon case **Shaikh Salim Haji Abdul Khayumsab Vs. Kumar 20056 Law Suit(SC) 1538**.

4. On the other hand, learned counsel for the respondent no.1 contended that the petitioners were served much before 31.07.2015. They appeared before the learned trial Court on 31.07.2015. The respondent moved an application for striking off the defence of the petitioners on 27.04.2016. The petitioners have filed the written statement on 18.08.2016 i.e. even after about four months of filing the application. He contended that as per the provisions of Order 8 Rule 1 CPC, the petitioners were required to file the written statement within a period of 30 days, which could have been extended maximum for a period of 90 days from the date of service of summons. But, in this case, they have filed the written statement even after

more than one year. The application moved by the respondent for striking off the defence was already pending at that time. Thus, he contended that the learned trial Court has rightly struck off the defence.

5. I have duly considered the aforesaid contentions.

6. There is absolutely no dispute with the proposition of law that the provisions of Order 8 Rule 1 CPC does not specifically take away the power of the Court to entertain the written statement beyond a period of 90 days. But, at the same time, the time can be extended by the Court in exceptional circumstances. The Hon'ble Apex Court in case **Kailash Vs.**

Nanhku & Ors. 2005(2) R.C.R (Civil) 379 has laid down as under:-

“41. Ordinarily, the time schedule prescribed by Order VIII, Rule 1 has to be honoured. The defendant should be vigilant. No sooner the writ of summons is served on him he should take steps for drafting his defence and filing the written statement on the appointed date of hearing without waiting for the arrival of the date appointed in the summons for his appearance in the Court. The extension of time sought for by the defendant from the court whether within 30 days or 90 days, as the case may be, should not be granted just as a matter of routine and merely for asking more so, when the period of 90 days has expired. The extension can be only by way of an exception and for reasons assigned by the defendant and also recorded in writing by the Court to its satisfaction. It must be spelled out that a departure from the time schedule prescribed by Order VIII, Rule 1 of the Code was being allowed to be made because the circumstances were exceptional, occasioned by reasons beyond the control of the defendant and such extension was required in the interest of justice, and grave injustice would be occasioned if the time was not extended.

42. A prayer seeking time beyond 90 days for filing the written statement ought to be made in writing. In its judicial discretion exercised on well-settled parameters, the Court may indeed put the defendants on terms including imposition of compensatory costs and may also insist on affidavit, medical certificate or other documentary evidence (depending on the facts and circumstances of a given case) being annexed with the application seeking extension of time so as to convince the Court that the prayer was founded on grounds which do exist.

43. The extension of time shall be only by way of exception and for reasons to be recorded in writing, howsoever brief they may be, by the court. In no case, the defendant shall be permitted to seek extension of time when the court is satisfied that it is a case of laxity or gross negligence on the part of the defendant or his counsel. The court may impose costs for dual purpose: (i) to deter the defendant from seeking any extension of time just for asking and (ii) to compensate the plaintiff for the delay and inconvenience caused to him.”

7. In case **Smt. Rani Kusum Vs. Smt. Kanchan Devi and ors. 2005(3) R.C.R.(Civil) 727** also the Hon'ble Apex Court has laid down that the extension of time to file the written statement may be allowed if is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be given if the time was not extended. Again in case **Mohammed Yusuf Vs. Faij Mohammad & Ors. 2009(1) R.C.R.(Civil) 633**, the Hon'ble Apex Court has laid down that extension of time beyond 30 days is not automatic, that should be exercised with caution and for adequate reasons based on a clear satisfaction of the justification for granting such extension.

8. In view of the aforesaid ratio of law, the time schedule prescribed by Order 8 Rule 1 CPC has to be honoured, though the extension of time to file the written statement can be granted by the Court in exceptional circumstances and due to the reasons beyond the control of the defendant. The said extension is not automatic. The prayer for seeking the extension to file the written statement beyond 90 days ought to be made in writing.

9. In the instant case, what to talk of the exceptional circumstance, there was absolutely no reason with the petitioners not to file the written statement within the time frame fixed under Order 8 Rule 1 CPC. The copy of the interim orders shows that the petitioners appeared before the learned

trial Court through their counsel on 30.07.2015. Obviously, they were served with the summons prior to that. Thereafter, the case was posted for filing the written statement and service of the remaining respondents. But, the petitioners did not file the written statement despite repeated adjournments. The respondent no.1-plaintiff even moved an application on 27.04.2016 pleading therein that the period for filing the written statement by the petitioners had already expired and they are no more entitled to file the written statement as per the provisions of Order 8 Rule 1 CPC. Even, on moving this application, the petitioners did not come out of the slumber and thereafter, they started seeking dates for filing the reply to that application. The written statement was submitted by them on 18.08.2016 i.e. after about four months of filing that application. The only reason pleaded by learned counsel for the petitioners for not filing the written statement by the petitioners within the stipulated time was that the summoning of remaining defendants was still not completed. That can hardly be a reason to justify the non filing of the written statement by the petitioners within the time framed stipulated in Order 8 rule 1 CPC. Thus, the petitioners have not been able to make out that they could not file the written statement within the stipulated period due to any exceptional circumstances or the reasons beyond their control. Rather, the circumstances of the case shows the gross negligence on the part of the petitioners. They even did not care to file the written statement when the plaintiff-respondent no.1 moved the application for striking off their defence. They have also not moved any written request to the learned trial Court to extend the time for filing the written statement. Thus, in these circumstances, the learned trial Court was fully justified in striking off the defence of the petitioners.

10. Consequently, the impugned order does not suffer from any illegality. Therefore, it does not call for any interference by this Court.

11. Thus, the present revision petition having no merits, is hereby dismissed.

20.12.2016

S.khan

**(DARSHAN SINGH)
JUDGE**

Whether speaking/reasoned : Yes/No

Whether Reportable : Yes/No