

Civil Revision No.7276 of 2016

In the High Court of Punjab and Haryana at Chandigarh

**Civil Revision No.7276 of 2016
Date of Decision:27.10.2016**

Sat Pal

---Petitioner

versus

Gulab Singh and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Arun Khatri, Advocate for the petitioner

REKHA MITTAL, J.

The present petition has been directed against order dated 11.8.2016 (Annexure P-5) passed by the Civil Judge (Junior Division), Palwal whereby defence of the petitioner (defendant No. 2) has been struck off for want of filing of written statement within a period of 90 days.

Counsel for the petitioner has submitted that Mahesh Kumar-respondent No. 2/defendant No. 1 has been proceeded against ex parte as he has lost his interest in the lis due to transfer of the property in question in favour of the petitioner, in regard whereof, a suit for possession by way of specific performance of contract has been filed by Gulab Singh, respondent No. 1. The petitioner put in appearance before the trial court for the first

time on 25.4.2016 through his counsel and the case was adjourned to 25.5.2016 for filing of written statement. On 25.5.2016, the case was adjourned to 11.8.2016 for the purpose of filing of written statement and reply to stay application and on that day, the trial court closed right of the petitioner to file his defence with the observations that as statutory period of 90 days has already expired, defence of the defendant is struck off. It is vehemently argued that in case the petitioner is not permitted to file his written statement when defendant No. 1 has already been proceeded ex parte, the case would go undefended causing a serious prejudice to the petitioner. It is further submitted that though the petitioner is not in a position to give satisfactory explanation for failure of his counsel to prepare the written statement and file the same well in time, keeping in view serious consequence likely to ensue for failure of the petitioner to file the written statement coupled with the factum that provisions of Order 8 Rule 1 of the Code of Civil Procedure (in short "CPC") are not mandatory but directory in nature, the petitioner may be allowed one opportunity to file the written statement on the date already fixed before the trial court i.e. 9.11.2016 and the respondent/plaintiff can well be compensated with costs for delay, if any, attributable to the petitioner. In addition, counsel would submit that

subsequent to order dated 11/8/2016, there is no progress in the proceedings as the respondent/plaintiff has not adduced any evidence till date.

I have heard counsel for the petitioner, perused the paper book particularly the order dated 11.8.2016.

Perusal of the impugned order would indicate that counsel for the petitioner was present before the Court but there does not seem to be any request by him for extension of time for filing of written statement, therefore, there was no occasion for the trial court to advert to the question as to whether it would be justified to allow another period of 30 days to the petitioner to file the written statement. As has been conceded by counsel, there is no explanation by the petitioner for his failure to file the written statement despite two opportunities granted by the trial court for 25.5.2016 and 11.8.2016. However, in view of the fact that in case the petitioner is not permitted to file the written statement, it would be of serious consequence for the petitioner as he would not be in a position to defend the proceedings wherein the respondent/plaintiff has sought specific performance of the agreement to sell purported to be executed by respondent No. 2 (defendant No. 1). After closing right of the petitioner to file the written statement, as per the submissions, there is no progress in the

proceedings as the respondent/plaintiff has not adduced any evidence and the case is now fixed for 9.11.2016. Keeping in mind that rules of procedure are handmaid of administration of justice and a fair opportunity must be provided to a litigant to contest the proceedings on merits, one opportunity is allowed to the petitioner to file the written statement positively within a period of 10 days with effect from today with a copy in advance to counsel opposite subject to payment of costs of Rs. 15,000/- to be deposited with the trial court and the same shall be released in favour of the respondent/plaintiff, as per rules. Failure of the petitioner to comply with the directions of this Court would entail dismissal of the petition.

Before parting with the order, it is clarified that the petition has been disposed of without notice to the respondent/plaintiff in order to avoid inconvenience and incurring expenditure by him. However, if the respondent has any grievance to express, he shall be at liberty to file an appropriate application before this Court.

(Rekha Mittal)
Judge

27.10.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No