

Civil Revision No.8628 of 2016

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In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.8628 of 2016

Date of Decision: 21.12.2016

Kulwant Singh

--- Petitioner

versus

Kuldip Raj

---Respondent

Coram: Hon'ble Mrs. Justice Rekha Mittal

**Present: Mr. Vipin Mahajan, Advocate
for the petitioner**

Rekha Mittal, J.

The present petition directs challenge against orders dated 20.1.2016 (Annexure P-2) and dated 13.9.2016 (Annexure P-4) passed by the Civil Judge (Junior Division), Gurdaspur whereby defence of the petitioner was struck off and the application for recalling the order striking off defence for want of filing of written statement did not find favour with the trial court.

Counsel for the petitioner has submitted that the respondent/plaintiff has filed a suit for recovery of Rs. 1.5 lakhs with interest at the rate of 9% per annum, registered on 10.9.2015 and was adjourned to 3.12.2015 for service of the petitioner/defendant. The petitioner caused appearance on 3.11.2015 and the case was adjourned to 5.12.2015 for filing written statement. On 5.12.2015, case was adjourned to 20.1.2016 on which date defence of the petitioner was struck off for want of filing of written statement. Application filed by the petitioner on 2.4.2016 for recalling order dated 20.1.2016 was also dismissed by the trial court without appreciating that even as per the provisions of Order 8 Rule 1 of the Code of Civil Procedure, defendant is entitled to 90 days to file the written statement and the court is competent to extend that period by another 30 days though the provisions thereof are not mandatory but directory in nature. It is further submitted that a serious prejudice is likely to be caused to the petitioner in case he is not permitted to file the written statement and defend the proceedings because in absence of written statement, cross examination of the plaintiff and his witnesses would be an empty formality.

I have heard counsel for the petitioner perused the the paper

book particularly the various zimni orders reproduced in the grounds of revision.

The petitioner caused appearance for the first time on 3.11.2015 in a suit that was registered on 10.9.2015. The petitioner did not file written statement on the adjourned date i.e. 5.12.2015 and the case was adjourned to 20.1.2016 for filing written statement subject to last opportunity. The trial court appears to have proceeded with the matter in a tearing hurry and without appreciating that closing right of the petitioner to file written statement would be of serious consequence for the petitioner and would amount to denial of an opportunity to defend the proceedings, passed order dated 20.1.2016. Despite the petitioner having filed an application for recalling that order, the court again failed to appreciate that the petitioner should be given an opportunity to file the written statement may be subject to certain terms and conditions like costs for delay, if any, attributable to the petitioner.

Taking into consideration the facts and circumstances discussed hereinbefore coupled with the principle of natural justice and fair opportunity, the impugned orders cannot be allowed to sustain and are accordingly set aside. The petitioner is allowed one opportunity to file the

written statement on the date fixed i.e. 11.1.2017 subject, however, to the condition that copy of the written statement shall be supplied to counsel opposite well in advance.

(Rekha Mittal)
Judge

21.12.2016

PARAMJIT

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No