

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No.8783 of 2014

Date of Decision: 25.4.2016

Jasmeen Kaur

---Petitioner

versus

Hem Singh and others

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. Rajesh Garg, Senior Advocate
with Mr. Sandeep Kumar, Advocate
for the petitioner
Mr. R.D.Bawa, Advocate
for respondent No. 1

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the Digest?

Rekha Mittal, J.

The present petition has been directed against the order dated 14.11.2014 (Annexure P-1) passed by the trial court whereby defence of the petitioner has been struck off for failure to file the written statement.

Counsel for the petitioner would contend that Jasmeen Kaur petitioner was not arrayed as defendant in the original suit but was impleaded as such since application filed by her under Order 1 Rule 10 of the Code of Civil Procedure (for short "CPC") was allowed by the trial court on 2.9.2013. The respondent/plaintiff raised an issue in regard to entitlement of the petitioner to file the written statement but the petitioner was allowed to file the written statement vide order dated 5.10.2013 passed by the learned trial court. It is further argued that since 5.10.2013, the case

remained pending for different purposes and was adjourned on a number of occasions. Defendant No. 2 in the suit filed the written statement on 26.2.2014 and thereafter the case was adjourned 3-4 times for filing of replication and subsequent thereto the case was fixed for evidence of the plaintiff on 18.4.2014. Till date, only one of the witnesses of the plaintiff has been examined partly by tendering into evidence his affidavit by way of examination in chief, therefore, no prejudice is likely to be caused to the respondent/plaintiff in case the petitioner is allowed one opportunity to file the written statement when otherwise the respondent/plaintiff can well be compensated with costs for delay attributable to the petitioner. The last submission made by counsel is that a serious prejudice is likely to be caused to the petitioner in case she is not permitted to file the written statement. In support of his contentions, he has relied upon judgment of the Hon'ble Supreme Court of India **Rani Kusum vs. Kanchan Devi (2005) 6 SCC 705.**

Counsel for the contesting respondent, on the contrary, has submitted that there is no explanation much less satisfactory, tangible and justifiable for failure of the petitioner to file the written statement despite the case having remained pending for more than one year since she was allowed to join the proceedings by allowing her application under Order 1 Rule 10 CPC and till the time the order impugned dated 14.11.2014 was passed striking off defence of the petitioner for her failure to file the written statement for a period of more than one year.

I have heard counsel for the parties, perused the various zimni orders reproduced at pages 2 to 10 of the petition as well as the impugned

order in the light of judgment in **Rani Kusum's case (supra)**.

Before adverting to the submissions made by counsel for the parties, it is appropriate to extract a relevant part of the judgment relied upon by the petitioner, reads thus:-

“The purpose of providing the time schedule for filing the written statement under order 8 Rule 1 CPC is to expedite and not to scuttle the hearing. The provision spells out a disability on the defendant. It does not impose an embargo on the power of the court to extend the time. Though the language of the proviso to Rule 1 Order 8 CPC is couched in negative form, it does not specify any penal consequences flowing from the non-compliance. The provision being in the domain of the procedural law, it has to be held directory and not mandatory. The power of the court to extend time for filing the written statement beyond the time schedule provided by Order 8 Rule 1 CPC is not completely taken away.

(v) Though Order 8 Rule 1 CPC is a part of procedural law and hence directory, keeping in view the need for expeditious trial of civil causes which persuaded Parliament to enact the provision in its present form, it is held that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely for the asking, more so when the period of 90 days has expired. Extension of

time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended. Costs may be imposed and affidavit or documents in support of the grounds pleaded by the defendant for extension of time may be demanded, depending on the facts and circumstances of a given case.”

The second para extracted hereinabove would make it evident that ordinarily the time schedule contained in the provision is to be followed as a rule and departure therefrom would be by way of an exception. A prayer for extension of time made by the defendant shall not be granted just as a matter of routine and merely on the asking, more so when the period of 90 days has passed. It has further been held that extension of time may be allowed by way of an exception, for reasons to be assigned by the defendant and also be placed on record in writing, howsoever briefly, by the court on its being satisfied. Extension of time may be allowed if it is needed to be given for circumstances which are exceptional, occasioned by reasons beyond the control of the defendant and grave injustice would be occasioned if the time was not extended.

Though the present case does not pertain to extension of time beyond a period of 90 days for filing of the written statement but the same

principles would be applied while dealing with a petition giving challenge to an order striking off defence of the defendant for his/her failure to file the written statement within the stipulated period as provided under Order 8 Rule 1 CPC. It is true that the provisions of Order 8 Rule 1 CPC are not mandatory but directory in nature as has been held in **Rani Kusum's case (supra)**.

In the case at hand, admittedly the petitioner never made any request for extension of time. She did not avail of the period of one year during which the case was adjourned umpteen number of times for one purpose or the other. The petitioner has not given any reason much less making out a case that she failed to file the written statement due to circumstances which are exceptional or occasioned by reasons beyond her control. When the facts and circumstances of the present case are examined in the light of observations made in **Rani Kusum's case (supra)**, I find myself unable to accept submissions of the petitioner much less to say that the order passed by the trial court striking off defence of the petitioner suffers from illegality or the same is perverse warranting intervention in exercise of supervisory jurisdiction of this court.

For the foregoing reasons, finding no merit, the petition is dismissed. No order as to costs.

(Rekha Mittal)
Judge

25.4.2016

PARAMJIT