

***IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.***

Civil Revision No.6816 of 2016

Date of Decision: 15.02.2017

Suman Joshi

....Petitioner

Versus

Sunita Rani and others

....Respondents

BEFORE :- HON'BLE MRS. JUSTICE DAYA CHAUDHARY

Present:- Mr. Aayush Gupta, Advocate
for the petitioner.

Mr. H.S. Ghuman, Advocate
for the respondents.

DAYA CHAUDHARY, J.

The present revision petition has been filed under Article 227 of the Constitution of India for setting aside the impugned order dated 01.07.2016 passed by the Civil Judge (Junior Division), Ludhiana, whereby, the defence of the petitioner has been struck off.

Briefly, the facts of the case are that plaintiff-respondent No.1 filed a suit for declaration stating that the memorandum of family settlement dated 04.05.2013 was legal, valid and binding between the parties. The suit was contested by the defendant and thereafter, vide order dated 01.07.2016, the defence of defendant No.2/petitioner was ordered to be struck off which is subject matter of challenge in the present petition.

Learned counsel for the petitioner submits that defendant No.2-petitioner appeared before the trial Court in person on 20.02.2016 and thereafter, the case was adjourned for 29.02.2016 for filing written

statement. Thereafter, repeated adjournments were sought on 15.03.2016 and 18.04.2016 for filing the written statement and ultimately, on 01.07.2016, the defence of petitioner/defendant No.2 was struck off for want of written statement.

Learned counsel for the petitioner submits that it was an omission on behalf of the petitioner but period of 90 days is only directory in view of decision rendered in judgment of Hon'ble the Apex Court in ***Salem Advocate Bar Association, Tamil Nadu vs Union of India 2005(6) SC 344*** and he prays that one more opportunity may be given to the petitioner and the petitioner is ready to pay the adequate cost to the other party. Learned counsel also submits that the matter, in dispute, was collusive between plaintiff-respondent No.1 and other respondents and just to defeat the valuable right of the petitioner and to cause miscarriage of justice, the valuable rights of the petitioner have been defeated.

While issuing notice of motion on 07.10.2016, the following contention of learned counsel for the petitioner was recorded :-

“ Learned counsel for the petitioner contends that defendant No.2-petitioner appeared in the trial Court in person on 20.2.2016. The case was adjourned for 29.2.2016 for filing the written statement. Thereafter, the case was adjourned for 15.3.2016, 18.4.2016 and ultimately for 1.7.2016 when the defence of defendant No.2-petitioner was struck off for want of written statement. Learned counsel further contends that even though there is an omission on behalf of defendant No.2-petitioner, but still keeping in view of decision rendered in ***Salem Advocate Bar Association, Tamil Nadu's*** case (supra), one more opportunity can be given to the petitioner subject to payment of adequate costs.”

Learned counsel for the respondents has opposed the submissions made by learned counsel for the petitioner on the ground that in spite of having various dates, still the reply was not filed. Not only the written statement but even the power of attorney was also not filed. Subsequently, only the power of attorney was filed on the date of passing the order, whereas, the written statement was not filed. The period of 90 days had expired for filing written statement and accordingly, the defence of the petitioner was struck off by the trial court.

Heard the arguments of learned counsel for the parties and have also perused the impugned order as well as other documents on the file.

The impugned order has been passed and defence of the petitioner has been struck off only on the ground that the petitioner has availed various opportunities and written statement has not been filed, whereas, Order 8 Rule 1 is directory. As per Order 8 Rule 1 of the Code of Civil Procedure, the Court has discretion to allow the defendant to file written statement even after expiry of period of 90 days, in case, exceptional grounds are there.

Hon'ble the Apex Court in case ***Kailash vs Nanhku and others 2005(2) RCR (Civil) 379*** has laid down that the provisions of Order 8 Rule 1 of CPC prescribing the period of 90 days for filing written statement is not mandatory and the same is directory in nature.

Similarly, in ***Salem Advocate Bar Association, Tamil Nadu's*** case (supra), it was held that by considering the facts and circumstances of the case, even the time can be given for more than 90 days for filing written statement.

In the present case, the period of 90 days has not expired and

still the defence of the petitioner has been struck off.

Accordingly, the present petition is allowed and the impugned order dated 01.07.2016 passed by the Civil Judge (Junior Division), Ludhiana is set aside and the trial Court is directed to afford one more opportunity to the petitioner to file written statement subject to cost of ₹ 20,000/- to be paid to the party opposite.

15.02.2017	(DAYA CHAUDHARY)
gupreet	JUDGE
Whether speaking/reasoned	Yes
Whether Reportable	Yes